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Sup Ct

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 73

V

H. J. HEINZ COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 8, 1940.

CERTIORARI GRANTED JUNE 3, 1940.

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VOL. I

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[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 8187

H. J. HEINZ COMPANY, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD—Filed March 2, 1939

The National Labor Relations Board, by its Secretary, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board, Series 1, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled "In the Matter of H. J. Heinz Company and Canning and Pickle Workers, Local Union No. 325, affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America, American Federation of Labor," the same being Case No. C-304 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Charge filed by Canning & Pickle Workers Organization No. 325, and verified May 27, 1937.

2. Amended charge filed by said organization, verified October 4, 1937.

3. Complaint and notice of hearing issued by the National Labor Relations Board on October 26, 1937.

4. Respondent's answer verified November 6, 1937.

5. Certified copy of order designating J. Raymond Walsh, Trial Examiner, dated November 13, 1937.

Documents listed hereinabove under items 1-5, inclusive, [fol. 2] are contained in the exhibits and included under the following item:

6. Stenographic transcript of testimony before J. Raymond Walsh, Trial Examiner for the National Labor Relations Board, on November 15, 16, 17, 18, 22, 23, 24, and 26, 1937, including all exhibits introduced in evidence.

7. Copy of order transferring proceeding to National Labor Relations Board, dated December 1, 1937.

8. Copy of decision, findings of fact, conclusions of law, and order of the National Labor Relations Board issued April 9, 1938, together with affidavit of service and United States Post Office return receipts thereof.

9. Copy of notice of intention to vacate, dated May 7, 1938, together with affidavit of service, and United States Post Office return receipts thereof.

10. Copy of respondent's answer and objection to notice of intention to vacate, dated May 13, 1938.

11. Copy of order, dated May 13, 1938, setting aside order of the National Labor Relations Board, together with affidavit of service and United States Post Office return receipts thereof.

12. Copy of order directing issuance, and proposed findings of fact, conclusions of law and order, issued July 13, 1938, together with affidavit of service.

13. Copy of respondent's exceptions to proposed findings, conclusions and order.

14. Respondent's petition for oral argument.

15. Copy of notice of hearing for purpose of oral argument, dated August 9, 1938, together with affidavit of service and United States Post Office return receipts thereof.

16. Copy of letter, dated August 19, 1938, stating that argument had been postponed by agreement of counsel.

17. Copy of notice of hearing for purpose of oral argument, dated September 23, 1938, together with affidavit of service and United States Post Office return receipts thereof.

18. Copy of list of appearances at oral argument held October 20, 1938.

19. Copy of decision, findings of fact, conclusions of law, and order of the National Labor Relations Board issued January 5, 1939, together with affidavit of service and [fol. 3] United States Post Office return receipts thereof.

In Testimony Whereof, the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board, in the City of Washington, District of Columbia, this seventeeth day of February, 1939.

Nathan Witt, Secretary, National Labor Relations Board. (Seal.)

[fol. 4] BEFORE THE NATIONAL LABOR RELATIONS BOARD, SIXTH REGION

Case No. VI-C-81

In the Matter of H. J. HEINZ COMPANY

and

CANNING & PICKLE WORKERS ORGANIZATION No. 325, Affiliated with A. F. of L.

CHARGE

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that H. J. Heinz Company, Pittsburgh, Pennsylvania, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) of said Act, in that

The said H. J. Heinz Company, through its officers and agents,

(1) by its actions hereinafter set forth, and otherwise, has interfered with, restrained and coerced, and is interfering with, restraining and coercing the employees of the said H. J. Heinz Company in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, which rights are guaranteed in Section 7 of the National Labor Relations Act, and

(2) has dominated and interfered with and is dominating and interfering with the formation and administration of the Heinz Employees Association in its Pittsburgh plant. Said domination and interference consists of acts restricting the employees freedom of expression, freedom of choice of the form or character of representation, forcing upon the employees the continuation of the said Heinz Employees Association, maintaining control and domination over the [fol. 5] procedure of administration of the said Heinz Employees Association, and many other acts not hereinbefore specifically set forth, and

(3) has contributed and is contributing financial and other support to the said Heinz Employees Association by defraying the expenses necessary for the administration thereof, by paying representatives for the time spent in connection therewith, by paying the obligations of the Association and by various and sundry other methods not hereinbefore specifically set forth.

The undersigned further charges that said unfair labor practices *and* unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Frank Kracik, Representative, Canning & Pickle Workers Organization No. 325, 922 East Ohio Street, N. S., Pittsburgh, Pa.

Subscribed and sworn to before me this 27th day of May, 1937. Ernest C. Dunbar, Regional Director.

[fol. 6] BEFORE NATIONAL LABOR RELATIONS BOARD

AMENDED CHARGE—Case No. VI-C-81—Filed October 4, 1937

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that H. J. Heinz Company, Pittsburgh, Pennsylvania, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that

The said H. J. Heinz Company, in spite of the fact that the Canning and Pickle Workers Organization No. 325, affi-

liated with the American Federation of Labor, was chosen as the exclusive bargaining agency by the employees of said company at an election June 8, 1937, conducted by the Sixth Region of the National Labor Relations Board, refused and has continued to refuse since said election to bargain collectively in good faith as contemplated by the National Labor Relations Act with representatives of the said Canning and Pickle Workers Organization No. 325, and by so refusing and continuing to refuse to bargain collectively in good faith, has violated and still is violating Section 8, subsections (1) and (5) of the National Labor Relations Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Anthony Tasker, Canning & Pickle Workers Local No. 325, A. F. of L., 922 East Ohio Street, N. S., Pittsburgh, Pa.

Subscribed and sworn to before me, this 4th day of October, 1937. Charles T. Douds, Acting Regional Dircetor.

[fol. 7] BEFORE NATIONAL LABOR RELATIONS BOARD

COMPLAINT

Board Exhibit No. 1

Case No. VI-C-81—Filed November 15, 1937

It having been charged by Canning and Pickle Workers Organization No. 325, 922 East Ohio Street, Pittsburgh, Pennsylvania, hereinafter called the union, that H. J. Heinz Company, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act approved July 5, 1935, the National Labor Relations Board, by the Acting Regional Director

for the Sixth Region, as agent for the National Labor Relations Board designated by the National Labor Relations Board Rules and Regulations, Series 1, as amended, Article IV, Section 1, hereby alleges the following:

1. Respondent, originally founded in 1869, is and has been since July 27, 1905, a corporation organized and existing by virtue of the laws of the Commonwealth of Pennsylvania, and is now and has continuously been engaged in the production, sale, and distribution of food products at its places of business throughout the United States and foreign countries, one of said places of business being in the City of Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania, and hereinafter referred to as the "Pittsburgh Plant".

2. Respondent, in the course and conduct of its business, causes and has continuously caused a substantial part of the raw materials used in the manufacture of its products to be purchased and transported in interstate and foreign commerce from and through states of the United States, other than the Commonwealth of Pennsylvania, and from foreign countries, to the "Pittsburgh Plant" in the Commonwealth of Pennsylvania, and causes and has continuously caused the products manufactured by it to be sold and transported in interstate and foreign commerce from the "Pittsburgh Plant" in the Commonwealth of Pennsylvania, to, into, and through states of the United States, other than the Commonwealth of Pennsylvania, and to, into, and through foreign countries.

3. Canning and Pickle Workers' Organization No. 325 is a labor organization as defined in Section 2, subdivision (5), of the said Act.

4. All of the employees at the "Pittsburgh Plant" of the respondent, excluding foremen, assistant foremen, salaried [fol. 8] employees, office help, and outside truck drivers, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the said Act, in order to insure to employees the full benefit of their rights to self-organization and to collective bargaining and otherwise to effectuate the policies of the said Act.

5. On June 8, 1937, pursuant to a "Memorandum of Understanding", a secret ballot was conducted by the Re-

gional Director of the Sixth Region of the National Labor Relations Board, among the employees in the unit set forth in paragraph 4 above, and at said secret ballot a majority of the employees participating in said ballot designated the union as their representative for the purpose of collective bargaining with respondent. At all times since said secret ballot, the union has, by virtue of Section 9(a) of the said Act, been the exclusive representative of all employees in said unit for the purpose of collective bargaining with respondent with respect to rates of pay, wages, hours of employment, and other working conditions.

6. On or about June 10, 1937, following said secret ballot, and thereafter, respondent met with the representatives of the union for the purpose of discussing rates of pay, wages, hours of employment, and other conditions of employment. Meetings were adjourned from time to time but respondent, by its actions and attitude, showed it had no real intention to bargain collectively in good faith with the duly authorized representatives of the union.

7. The said acts of respondent, and each of them, set forth in paragraph 6 above, and other acts, constitute unfair labor practices within the meaning of Section 8, subdivision (5) of said Act.

8. Respondent, by its officers and agents, did, during the month of April and May, 1937, and thereafter, cause to be put in force and effect at its "Pittsburgh Plant", a plan of employee representation for the purpose of collective bargaining through an association formulated and worked out by the directors, officers, and agents of the respondent, or under its supervision, and known as the "Heinz Employees' Association" (hereinafter referred to as the "Association"). Said "Association" was designed and intended by the respondent to defeat, impair, and prevent the self-organization of the employees of the respondent. Respondent, at or about the time when it caused the said "Associa-
[fol. 9] tion" to become operative, did, through its officers and agents, openly, publicly, and notoriously express its antagonism in opposition to the formation and/or recognition of other forms of employee organization. Respondent, by its open, notorious, and expressed opposition to other forms of employee organization, and by other acts, and its open, notorious, and expressed support of the formation and

adoption of the "Association", and by other acts, dominated and controlled the formation of said "Association".

9. Respondent, by its officers and agents, while operating at its "Pittsburgh Plant", as described above, has since April, 1937, and thereafter down to and including the date of the issuance of this complaint, fostered, encouraged, sponsored, dominated, and interferred with the enlistment of membership in, and administatrion of said "Association", and contribute- financial and other support to it.

10. By said acts of the respondent, and each of them, set forth in paragraphs 8 and 9 above, and by other acts, the respondent did dominate and interfere with the formation and administration of a labor organization, and did support said labor organization and by said acts and each of them, and by other acts, did engage in and is engaging in unfair labor practices within the meaning of Section 8, sub-division (2) of the said Act.

11. By the aforementioned acts and each of them set forth in paragraphs 6, 8, and 9, above, and by other acts, the respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts, and by each of them, and by other acts, did engage in and is engaging in unfair labor practices within the meaning of Section 8, sub-division (1) of said Act.

12. The activities of the respondent set forth in paragraphs 6, 8, and 9, above, occurring in connection with the operations of respondent described in paragraphs 1 and 2 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states and foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

13. The aforesaid actions of the respondent set forth *ni* [fol. 10] paragraphs 6, 7, 8, 9, 10, 11, and 12, constitute unfair labor practices affecting commerce within the meaning of Section 8, sub-divisions (1), (2), and (5), and Section 2, sub-divisions (6) and (7) of said Act.

Wherefore, the National Labor Relations Board on this 26th day of October, 1937, issues its complaint against H. J. Heinz Company, respondent herein.

BEFORE NATIONAL LABOR RELATIONS BOARD

NOTICE OF HEARING

Please Take Notice that on the 15th day of November, 1937, at 10 o'clock in the forenoon, in Courtroom No. 4, Sixth Floor, New Federal Building, Pittsburgh, Pennsylvania, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with said Rules and Regulations, Series 1, as amended, Article IV, Section 3, and Article II, Section 22, on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Acting Regional Director for the Sixth Region, with offices at 1030 New Post Office Building, Pittsburgh, Pennsylvania, acting in this matter as the agent of the National Labor Relations Board, an answer to the attached Complaint on or before the first day of November, 1937.

Enclosed herewith for your information, is a copy of the Rules and Regulations, Series 1, as amended, made and Published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Acting Regional Director of the Sixth Region, on the 26th day of October, 1937.

Charles T. Douds, Acting Regional Director, Sixth Region.

[fol. 11] BEFORE NATIONAL LABOR RELATIONS BOARD

AFFIDAVIT OF SERVICE

Board Exhibit No. 1

Case No. VI-C-81—Filed November 15, 1937

Alma E. Pike, Stenographer, Sixth Region being duly sworn, deposes and says that on the 26th of October, 1937, as agent for the National Labor Relations Board, she served upon the Heinz Employees Association, an interested party

in the above-entitled matter, by sending on that date to I. C. Bennett, President, Heinz Employees Association, R. D. No. 6, Box 736-H, Mt. Oliver Post Office, Pittsburgh, Pennsylvania, by postpaid registered mail a copy of the Complaint and Notice of Hearing in the above-entitled matter, dated October 26, 1937; and deponent further states that thereafter she received from the United States Post Office a return delivery receipt therefor, dated October 30, 1937, and numbered 12590, which return receipt is attached hereto and made a part hereof.

Alma E. Pike.

Subscribed and sworn to before me this first day of November, 1937. Charles T. Douds, Acting Regional Director.

Return Receipt

Registered Mail.
(Receipt for registered article No. 12590 omitted.)

(Original return receipt signed by Mr. C. I. Bennett, President, Heinz Employees Association omitted.)

[fol. 12] Before National Labor Relations Board

Affidavit of Service

Board Exhibit No. 1.

Case No. VI-C-81—Filed November 15, 1937

Alma E. Pike, Stenographer, Sixth Region, being duly sworn, deposes and says that on the 26th of October, 1937, as agent for the National Labor Relations Board, she served upon the H. J. Heinz Company, respondent in the above entitled matter, by sending on that date to H. J. Heinz Company, Progress Street, N. S., Pittsburgh, Pennsylvania, by postpaid registered mail a copy of the Complaint and Notice of Hearing in the above-entitled matter, dated October 26, 1937; and deponent further states that thereafter she received from the United States Post Office a return delivery receipt therefor, dated October 27, 1937, and numbered

12591, which return receipt is attached hereto and made a part hereof.

Alma E. Pike.

Subscribed and sworn to before me this first day of November, 1937. Charles T. Douds, Acting Regional Director.

Return Receipt

Registered Mail.

(Receipt for registered article No. 12591 omitted.)

(Original return receipt signed by A. Brooks, agent of H. J. Heinz Co. omitted.)

[fol. 13] Before National Labor Relations Board

Answer of the Respondent, H. J. Heinz Company

Board Exhibit No. 1

Case No. VI-C-81—Filed November 15, 1937

Now comes H. J. Heinz Company, the respondent above named, and, saving and reserving unto itself its constitutional rights and its rights to object to the sufficiency and form of the Complaint herein, and to the charges upon which said Complaint is based, for its answer to said Complaint, respectfully shows and alleges:

With respect to the preliminary recitals of said Complaint, the respondent denies that it has engaged in or is engaging in any unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, or otherwise, and denies that the National Labor Relation- Board has any authority to issue any complaint against the respondent.

1. The respondent admits the allegations of paragraph 1 of the Complaint.

2. For its answer to paragraph 2 of the Complaint, the respondent denies the allegations thereof as they are therein stated. The respondent, however, admits that a substantial portion of the raw materials used in the manufacture of

its products is purchased from suppliers situated in states other than the Commonwealth of Pennsylvania and in foreign countries, and that such portion of such raw materials is transported, with small exceptions, by independent carriers to the respondent's Pittsburgh plant in the Commonwealth of Pennsylvania from and through states of the United States, other than the Commonwealth of Pennsylvania.

The respondent also admits that a substantial portion of the products manufactured by it is sold to purchasers situated in states other than the Commonwealth of Pennsylvania and in foreign countries, and that such portion is transported, with small exceptions, by independent carriers from the respondent's Pittsburgh plant in the Commonwealth of Pennsylvania to, into and through states of the United States, other than the Commonwealth of Penn-
[fol. 14] sylvania, and to, into and through foreign countries.

The respondent denies each and every other allegation of said paragraph 2, not hereinbefore specifically admitted.

3. For its answer to paragraph 3 of the Complaint, respondent is advised by its counsel, believes and therefore avers that said paragraph is a statement of a conclusion of law and therefore requires no answer. The respondent further says that it has no exact knowledge as to the nature, constitution or activities of the "Canning and Pickle Workers Organization No. 325" therein referred to, and if such facts be deemed material, the respondent demands strict proof thereof.

4. For its answer to paragraph 4 of the Complaint, the respondent is advised by its counsel, believes and therefore avers that the allegations of said paragraph are statements of conclusions of law and therefore require no answer. The respondent further says that in so far as said paragraph may contain allegations or inferences of fact, the respondent, upon information and belief, denies each and every one thereof.

5. For its answer to paragraph 5 of the Complaint, the respondent admits that, on June 8, 1937, a secret ballot was conducted by the Regional Director of the Sixth Region of the National Labor Relations Board, among the employees in the unit described in paragraph 4 of said Complaint, and that following said ballot, the National Labor Relations

Board, acting through its Regional Director as aforesaid, certified that a majority of the employees participating therein had cast ballots designating the Union as their representative for the purpose of collective bargaining with the respondent, but respondent does not admit thereby that said unit is or was a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the National Labor Relations Act or otherwise.

With respect to the second sentence of said paragraph 5, the respondent is advised by counsel, believes and therefore avers, that said sentence is a statement of a conclusion of law and therefore requires no answer, but in so far as said sentence may contain allegations or inferences of fact, the respondent, upon information and belief, denies each and every one thereof.

6. For its answer to paragraph 6 of the Complaint, the respondent admits the allegations set forth in the first sentence thereof.

[fol. 15] With respect to the second sentence of said paragraph 6, the respondent denies each and every allegation thereof, and specifically denies that the respondent, by its actions or attitude or otherwise, showed it had no real intention to bargain collectively and specifically denies that it did refuse or continue to refuse to bargain collectively in good faith with the duly authorized representatives of the Union. On the contrary, the respondent avers that it has, on many occasions, met with officers and representatives of the Union to discuss subjects of collective bargaining, and has at all times endeavored, and is endeavoring, in good faith to bargain collectively with said officers and representatives of said Union with respect to rates of pay, wages, hours of employment and other conditions of employment; and the respondent further avers that it has at all times fully and faithfully observed and performed any and all obligations which it may have to bargain collectively with its employees and their lawful representatives.

Further answering the averments of said paragraph 6, the respondent avers that the officers and representatives of the Union therein named have on several occasions made excessive and improper demands of the respondent and have used improper tactics during their negotiations with the respondent, thereby hindering and impeding the course of collective bargaining between said Union and the re-

spondent. But despite these acts of said officers and representatives, the respondent has at all times made every reasonable effort to bargain collectively with said Union in a fair and amicable manner.

7. For its answer to paragraph 7 of the Complaint, the respondent denies each and every allegation thereof, and specifically denies that it has committed any of the acts therein described, denies that any of its acts or activities constitute unfair labor practices within the meaning of the National Labor Relations Act, and denies that it has committed or is committing any unfair labor practices within the meaning of said Act.

8. For its answer to paragraph 8 of the Complaint, the respondent denies each and every allegation thereof.

With respect to the first sentence of said paragraph 8, the respondent specifically denies that it, by its officers or agents or otherwise, did, during the months of April and May, 1937, or at any other time, cause to be put in force and effect, at its Pittsburgh plant or elsewhere, a plan of [fol. 16] employee representation for the purpose of collective bargaining through an association formulated or worked out by any of the directors, officers or agents of the respondent, or under its supervision, or otherwise, and denies that the "Association" described in said paragraph, or any other association of similar character, was or is formulated or worked out by any of the directors, officers or agents of respondent or under its supervision.

With respect to the second sentence of said paragraph 8, the respondent specifically denies that the "Association" therein described was designed or intended by the respondent to defeat, impair or prevent the self organization of the employees of the respondent.

With respect to the third sentence of said paragraph, respondent denies that it caused the "Association" therein named to become operative, and denies that it at any time did, through its officers or agents, or otherwise, openly, publicly or notoriously express its antagonism in opposition to the formation or recognition of other forms of employee organization.

With respect to the fourth sentence of said paragraph, the respondent denies that it has at any time dominated or controlled the formation of said "Association", by any of the means therein set forth or otherwise, denies that it has

committed or is committing any of the acts therein described, and denies that it has in any way opposed or expressed its opposition to other forms of employee organization, or supported or expressed its support of the formation or adoption of said "Association".

9. For its answer to paragraph 9 of the Complaint, the respondent denies each and every allegation thereof. The respondent specifically denies that it has, since April, 1937, or thereafter, or at any other time, fostered, encouraged, sponsored, dominated or interfered with the enlistment or membership in, or administration of, the association, and denies that it has contributed financial or other support to it, and denies that it did or continues to foster, encourage, sponsor, dominate or interfere with the enlistment or membership in or administration of said "Association", or contribute financial or other support to it.

10. For its answer to paragraph 10 of the Complaint, the respondent denies each and every allegation thereof. The respondent specifically denies that it has committeed or is [fol. 17] committing any of the acts therein described, denies that it did dominate or interfere with the formation or administration of a labor organization, denies that it did support said labor organization and denies that it did engage in or is engaging in unfair labor practices within the meaning of the National Labor Relations Act or otherwise.

11. For its answer to paragraph 11 of the Complaint, the respondent denies each and every allegation thereof.

Respondent specifically denies that it has committed or is committing any of the acts described therein, denies that it did interfere with, restrain or coerce, or is interfering with, restraining or coercing its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, or otherwise, and denies that it did engage in or is engaging in unfair labor practices within the meaning of the National Labor Relations Act, or otherwise.

12. For its answer to paragraph 12 of the Complaint, respondent is advised by counsel, believes and therefore avers that the allegations therein set forth are speculative and hypothetical, and that said paragraph is a statement of conclusions of law and therefore requires no answer; but the respondent specifically denies that it has engaged in

or is engaging in any of the activities described in said paragraph 12, or in paragraphs 6, 8 or 9 of the Complaint.

13. For its answer to paragraph 13 of the Complaint, the respondent denies each and every allegation thereof.

The respondent specifically denies that it has committed or is committing any of the actions therein described and denies that any of its acts or activities constitute unfair labor practices affecting commerce within the meaning of the provisions of the National Labor Relations Act, or otherwise.

For a further answer to the Complaint herein, the respondent says that said Complaint should be dismissed for the following reasons, among others:

(a) The charges filed by the Canning and Pickle Workers Organization No. 325 (referred to in the Complaint as the Union), upon which said Complaint is based, were not filed for any just or lawful purpose or in good faith.

(b) The issuance of the Complaint, the facts and circum- [fol. 18] stances surrounding the same, the purpose for which said Complaint was filed and the method of conducting the proceedings thereunder, constitute a denial to the respondent of due process of law as guaranteed to it under the provisions of the Constitution of the United States of America.

(c) The provisions of the National Labor Relations Act, upon which said Complaint is based, are invalid, unlawful and void, in that such provisions are contrary to and in conflict with the Constitution of the United States of America.

(d) The procedure established by the National Labor Relations Act, for the hearing and determination by the National Labor Relations Board of the alleged unfair labor practices charged in the Complaint, is contrary to the provisions of the Constitution of the United States of America, in that it deprives or purports to deprive the respondent of its rights, as guaranteed by said Constitution, to have a judicial determination of jurisdictional and constitutional issues.

(e) The Canning and Pickle Workers Organization No. 325 is not qualified to file the charges upon which the Complaint is based, for the reason that it has consistently vio-

lated the provisions and policies of the National Labor Relations Act, by attempting to prevent and interfere with the exercise by respondent's employees of full freedom of association, self organization and designation of representatives of their own choosing, for the purpose of negotiating the terms of their employment with the respondent or other mutual aid or protection.

(f) The Complaint, and the charges upon which said Complaint is based, are frivolous, insubstantial and insufficient in law.

Wherefore, the respondent prays that the Complaint of the National Labor Relations Board against H. J. Heinz Company, the respondent herein, should be dismissed, and that the costs of this proceeding should be placed upon the Canning and Pickle Workers Organization No. 325, or upon the complainant herein, to the end that the respondent may not be prejudiced by the frivolous and capricious action of [fol. 19] said Canning and Pickle Workers Organization No. 325 in filing the charges upon which said Complaint is based,

H. J. Heinz Company, By Hugh C. Anderson, Vice President, 1062 Progress Street, N. S., Pittsburgh, Pa.

Thorp, Bostwick, Reed & Armstrong, Attorneys for Respondent, 2812 Grant Building, Pittsburgh, Pennsylvania.

Duly sworn to by Hugh C. Anderson. Jurat omitted in printing.

[fol. 20] Before National Labor Relations Board

AFFIDAVIT OF SERVICE

Board Exhibit No. 1

Case No. VI-C-81—Filed November 15, 1937

Alma E. Pike, Stenographer, Sixth Region, being duly sworn, deposes and says that on the 26th of October, 1937, as agent for the National Labor Relations Board, she served upon the Amalgamated Meat Cutters and Butcher Workmen of North America, complainant in the above-entitled matter, by sending on that date to Anthony Tasker, 922

East Ohio Street, N. S., Pittsburgh, Pennsylvania, by postpaid registered mail a copy of the Complaint and Notice of Hearing in the above-entitled matter, dated October 26, 1937; and deponent further states that thereafter she received from the United States Post Office a return delivery receipt therefor, dated October 27, 1937, and numbered 12589, which return receipt is attached hereto and made a part hereof.

Alma E. Pike.

Subscribed and sworn to before me this first day of November, 1937. Charles T. Douds, Acting Regional Director.

Return Receipt

Registered Mail.

(Receipt for registered article No. 12589 omitted.)

Original return receipt signed by Margaret Rose, agent of Anthony Tasker omitted.)

[fols. 21-22] Before National Labor Relations Board

Order Designating Trial Examiner

Board Exhibit No. 1

Case No. VI-C-81—Filed November 15, 1937

A charge having been filed in this matter, and it having appeared to the Regional Director of the 6th Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised on the premises,

It is Hereby Ordered that J. Raymond Walsh act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1, as amended, of the National Labor Relations Board.

Dated, Washington, D. C., November 13, 1937.

By direction of the Board:

Benedict Wolf, Secretary.

[fol. 23] BEFORE THE NATIONAL LABOR RELATIONS BOARD

STIPULATION OF FACTS

BOARD EXHIBIT No. 2

Case No. VI-C-81—Filed November 15, 1937

It is hereby stipulated and agreed by and between the National Labor Relations Board and the respondent, H. J. Heinz Company, acting by their respective duly authorized attorneys, that the following facts (which are based upon information supplied by the respondent, at the request of the National Labor Relations Board), are true and correct:

1. The respondent operates plants situated in the following localities.

Pittsburgh, Pennsylvania.
Ambridge, Pennsylvania.
Chambersburg, Pennsylvania.
Sharpsburg, Pennsylvania.
Princeton, Indiana.
Muscatine, Iowa.
Henderson, Kentucky.
Holland, Michigan.
Salem, New Jersey.
Medina, New York.
Bowling Green, Ohio.
Fremont, Ohio.
Winchester, Virginia.
Leamington, Ontario, Canada.

All of said plants, except the plant situated at Pittsburgh, Pennsylvania, are branch factories.

2. The respondent has eighty-nine (89) receiving stations, situated in the following places:

COLORADO

Atwood
Iliff
Hillrose
Kersey

INDIANA

Hamlet
Buffalo
Fulton
[fol. 24 Monon
Monticello
Pulaski
Royal Center
Twelve Mile
Winamac
Wolcott
Bremen
LaPaz
Silver Lake
Mill Creek
Stillwell

MICHIGAN (Fremont Dist.)

Freesoil
Hesperia
Klondike
Twin Lakes
Wooster
Newaygo
Bucks
Victory
Ferry
Carr
Sheldons
Big Prairie
Woodville

MICHIGAN (Holland Dist.)

East Saugatuck
Hamilton
Agnew
Allendale
Borculo
Evart
Hawkins
Ensley
Kent City

Belding
Wyman
Broomfield
Rolison
Ashton

MICHIGAN (Saginaw Dist.)

Birch Run
Brant
Burt
[fol. 25] Edgewood
Hemlock
Lakefield
McDonough's
St. Charles
Wheeler
Sterling
Edwards
Maple Ridge
Hale
Gagetown
Millington

WISCONSIN

Manchester
Almond
Coloma
Martinsen
W. Plainfield
Rudolph
Wisconsin Rapids
Sherwood
Vesper
Baraboo
Briggsville
Poynette
Rio
Cataract
Melrose
Tomah
Mt. Morris
Neshkoro
Princeton

Red Granite
Montello
Clark's Mills
Crystal Lake
Pine River

CANADA

Newbury
Shedden
Wheatley
West Lorne

3. The respondent has fifty-three (53) salting stations, [fol. 26] situated in the following places:

COLORADO

Ft. Morgan
La Salle

INDIANA

Argos
Bourbon
Grovertown
Hibbard
Kewanna
No. Liberty
Leiters Ford
Logansport
Monterey
Plymouth
Tippecanoe
Walkerton

MICHIGAN (Fremont Dist.)

Fountain
Fremont
New Era
Reeman
Scottsville
Shelby
Tallman
Thompsonville
White Cloud

MICHIGAN (Holland Dist.)

Coopersville
Harlem
Holland
Hudsonville
Nunica
Zeeland
Big Rapids
Grant
Lowell
McBrides
Mecosta
Reed City
Rockford

MICHIGAN (Saginaw Dist.)

Bay City
Caro
[fol. 27] Reese
Saginaw
Standish
Unionville
Vassar

WISCONSIN

Dalton
Hancock
Nekoosa
Pittsville
Portage
Sparta
Wautoma
Westfield
Wild Rose

CANADA

Leamington

4. The respondent has sales offices situated in the following places:

Albany, New York.
Allentown, Pennsylvania.
Baltimore, Maryland.

Birmingham, Alabama.
Buffalo, New York.
Chicago, Illinois.
Cincinnati, Ohio.
Cleveland, Ohio.
Columbus, Ohio.
Dallas, Texas.
Denver, Colorado.
Des Moines, Iowa.
Detroit, Michigan.
Duluth, Minnesota.
Grand Rapids, Michigan.
Harrisburg, Pennsylvania.
Hartford, Connecticut.
Houston, Texas.
Indianapolis, Indiana.
Kansas City, Missouri.
Knoxville, Tennessee.
Long Island City, New York.
Louisville, Kentucky.
Memphis, Tennessee.
Milwaukee, Wisconsin.
[fol. 28] Newark, New Jersey.
New Orleans, Louisiana.
New York, N. Y.
Norfolk, Virginia.
Oklahoma City, Oklahoma.
Omaha, Nebraska.
Philadelphia, Pennsylvania.
Portland, Maine.
Portland, Oregon.
Providence, Rhode Island.
Rock Island, Illinois.
Scranton, Pennsylvania.
Seattle, Washington.
Sioux City, Iowa.
Spokane, Washington.
St. Louis, Missouri.
St. Paul, Minnesota.
Syracuse, New York.
Toledo, Ohio.
Washington, D. C.
Calgary, Alberta, Canada.
Montreal, Quebec, Canada.

Toronto, Ontario, Canada.
Vancouver, B. C., Canada.
Winnipeg, Manitoba, Canada.

5. The respondent has five (5) subsidiary companies, the names and locations of which are as follows:

H. J. Heinz Corporation, Pittsburgh, Pa.
H. J. Heinz Company of Massachusetts, Cambridge, Mass.
Lake Charles Products Corporation, Lake Charles, La.
H. J. Heinz Company, Limited, Harlesden, England.
H. J. Heins Company, (Espana) S. L., Seville, Spain.

6. The respondent does not own or operate any standard railway freight and refrigerator cars, but does own twenty-seven (27) pickle tank cars and fifteen (15) vinegar tank cars, which are used for the transportation of bulk pickles and vinegars between factories.

7. The respondent's Pittsburgh Plant occupies sixteen [fol. 29] acres of land in the City of Pittsburgh, Pennsylvania.

8. At its Pittsburgh Plant, the respondent employs, at the present time, 1894 hourly employees and 689 salaried employees.

Raw materials and finished products are transported to and from the respondent's Pittsburgh Plant, for the most part, by the Pennsylvania Railroad and the Baltimore and Ohio Railroad. However, some of the inbound and outbound shipments are handled by independent truck operators and, to a lesser extent, by trucks owned and operated by the respondent. The respondent also receives and ships articles by parcel post.

It is likewise stipulated and agreed that the foregoing facts shall be accepted as true and correct, for the purposes of the above entitled proceeding, without the necessity of proving the same otherwise than by the introduction in evidence of this stipulation, but each party reserves unto itself whatever rights it may have to object to the relevancy and competency of any of the facts herein set forth.

Robert H. Kleeb, Attorney for National Labor Relations Board. Earl F. Reed, R. G. Bostwick, Attorneys for H. J. Heinz Company, Respondent.

November 12, 1937.

[fol. 30] BOARD EXHIBIT No. 4

Case No. VI-C-81. Filer November 15, 1937

Greater Pittsburgh

Official Organ of The Chamber of Commerce of Pittsburgh

52nd Year Vol. 9, No. 16

Pittsburgh, Pa., December 10, 1927

Pittsburgh and the Pittsburgh Spirit

Food Preserving—Pittsburgh, The Home Of The Greatest Food Preserving Industry Of Its Kind In The World, Its Development From A Single Product To Its Present World-Wide Service

By Howard Heinz, President of the H. J. Heinz Co.*

Preceding papers in the series now being presented to the Chamber of Commerce have dealt with various industries and institutions that contribute to the fame, the general progress and influence of Pittsburgh. They are notable chapters in the history of a community that has accomplished much and still retains a position where it can do more.

The descriptions of the development of Pittsburgh's industrial and educational institutions must arouse in us new visions of the city's greatness and give us sustained pride and confidence in our community.

The story is told of an old farmer who had decided to sell his property and listed it with a real estate agent, who wrote a very good, but merely a true description of the farm. When the agent read the proposed advertisement to the farmer for his approval, the old man said: "Read that again."

After a second reading, the farmer sat for several minutes in a thoughtful mood and finally declared: "I don't believe I want to sell. I have been looking for that kind of

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* Mr. Heinz's address, the nineteenth in the series by leading financiers and industrialists on the general subject "Pittsburgh and the Pittsburgh Spirit" was delivered in the Chamber of Commerce last Tuesday, Dec. 6, 1927.

a place all my life and it never occurred to me that I had it until you described it to me. I don't want to sell." Some of us, even the most loyal, upon learning the facts concerning our city and its possibilities, may be convinced that it [fol. 31] is even a better place in which to work and to live and rear our children than we had ever realized or imagined.

I am called upon to discuss a specific company and its part in an industry that has been almost as revolutionary in its effect upon home life as the radio, the motion picture, the automobile, electrical appliances and other great inventions of the age. I have not used the word "revolutionary" without thought. It has been a comparatively short time since the housewife was compelled to prepare all of the food that was served at her table. Morning, noon and evening meals kept her in the kitchen. Hot summer days found her working over a stove preserving foods to fill her storehouse with supplies for the winter. It was truly said that "Woman's work was never done". Now she is no longer dependent upon her own efforts to supply her household with nourishing foods. Most of them are being placed before her in pure and wholesome form, all ready to serve. The revolution has only begun and each day will reduce the work that is necessary to a well regulated household. The time seems near at hand when the preparation of food, the most important task of the housewife, will be the least burdensome of all her duties. With more time to devote to other things, who can predict what women will accomplish in her new freedom?

My subject is "Food Preserving—Home of the greatest food preserving industry of its kind in the world, its development from a single product to its present world-wide service". I am timid in approaching it because of a fear that in discussing the work of the founder of this enterprise I may appear fulsome, and in describing the development of the business with which I am connected, you may assume that I am boastful. I am neither. It is my aim in presenting this paper to point to the possible development of our beloved city by drawing a verbal picture of what has been accomplished here by those who cut paths that we might follow. If seemingly I depart from my immediate subject, it will be for the purpose of giving major consideration to the first part of it, or food preserving, in the broadest possible sense. It is quite natural to give this subject a place on the Chamber of Commerce program, be-

cause, as the Post-Gazette recently pointed out, our city occupies a foremost place among the cities of the world as a center for the preparation and distribution of food prod-
[fol. 32] ucts, and Pittsburgh has the largest food preserving plant of its kind in the world.

It has been rightly said that food preparation and preservation form one of Allegheny County's prime industries. The Pennsylvania Department of Internal Affairs assemblies statistics to show the industrial progress of the state and also of its counties. It groups the products of Allegheny County into a dozen classifications and food and its kindred products rank second in value, following only metals and metal products. The value of the products of the food industry in 1926 was $130,690,500. In capital invested it ranks fourth, with a total of $76,464,900.

The great tonnage and huge output of the Pittsburgh district attracts the attention of the world. The basic reason for the enormous quantity is quality. The successful industrial pioneers of this district gave primary consideration to quality, the theory being that quantity production would take care of itself if the quality were right. These pioneers took more pride in quality than in quantity. In fact, they were so proud of their products that they stamped them with their own names. They *h*ay have had trade marks, slogans and brands, but most conspicuous were the names of the makers. Carnegie was stamped upon steel, Westinghouse upon electrical appliances and air brakes, Armstrong on cork, O'Hara upon glass and Heinz upon pickles and other food products. These names were so deeply stamped that even to this day they are synonyms of the products upon which they appear.

The most important science in the world is food chemistry, for without proper food we could not live, and a nation's health is dependent upon its dietetics. Woman was the first chemist. The garden of Eden was still occupied when woman began an intuitive study of chemistry to determine the edible foods of the earth, combinations that might be eaten with safety and how they should be prepared to provide the largest amount of nutriment. We may picture primitive woman preparing food in an earthen utensil or on a spit over an open fire, for she soon learned that certain foods should be cooked. Her crude methods have been steadily developed to present standards and customs, more and more definitely controlled and governed by scientific

principles and today woman is interested in vitamins, fats, calories, etc.

[fol. 33] It was natural that woman should devise — way to preserve foods for she realized that the season of plenty should provide for the season of famine when nature was passing through the non-productive period. And so, through the activity of the mother-mind of woman, food preparation and preservation had their origin.

The Civil War apparently awakened thoughts of food preservation in the minds of many, for within a few years after that conflict, the canning and preserving industry rapidly expanded.

It was shortly after the War, or to be exact, in 1869, that my father, Henry J. Heinz, founded the business which bears his name. As one writer expressed it, to him "life meant growth. He had a great love for all things that grow, the seed that mysteriously send- its shoots up through the soil, the child in whose face shines the promise of manhood or womanhood, the soul that ever aspires upward toward greater fulfillment". I quote this descriptive paragraph because without an interest in humanity and an aim to develop men, his venture would not have led to the success that it did.

My father was a typical American boy. He was born on the South Side in 1844 and while still a lad, his parents moved to Sharpsburg, Pa. It was at the age of 25 that he founded the business that bears his name. In planting a small patch of horse-radish at Sharpsburg, he sowed the seed from which has sprung an international business. He leased a small building near the garden, and there, with the assistance of two women and a boy, he grated, prepared and bottled horse-radish, the first of the 57 Varieties of Pure Food Products.

Handicaps and obstacles were many, but my father's venture, based upon quality, rather than quantity production, was a success and stimulated his ambitions. In 1871 pickles were added to the products bearing Heinz labels and steady growth in the business followed.

The business outgrew its Sharpsburg home in two years, and was moved to Second Avenue, in the trade center of Pittsburgh. By 1876, the capacity of the new plant was doubled. But in 1889, so many people had come to like the products, that central Pittsburgh no longer afforded space for an establishment that would meet their demands.

Therefore, the plant was moved to the north side of the Allegheny River, where it now stands, but, of course, it is much larger than in its original form, for there are now [fol. 34] 24 buildings that cover more than 15 city blocks, while its branch factories and distributing warehouses are spread over the whole commercial world.

The business which began in Sharpsburg almost 59 years ago, with one variety, is now represented by more than 57 varieties of Pure Food Products. In assembling raw products, more than 300 receiving stations and salting houses are maintained. The company operates 25 branch factories and kitchens in this country, England, Spain and Canada. The industry is really one of diversified interests, for the company operates its own glass bottle factory, box and can factories, and also owns and operates many of its own railroad cars. More than 1,000,000 square feet of glass were used in the construction of its greenhouses and nurseries.

The supply garden, which once consisted of less than an acre, now comprises approximately 150,000 acres, the fields and gardens being located in many parts of America and in foreign lands, for each crop is grown where soil and climate unite to produce the best-flavored fruit and vegetables. These crops are planted, cultivated and harvested by 150,000 or more people.

To distribute the products in the way that is most advantageous to the dealer and consumer, 79 sales branches and warehouses are maintained in the United States, England and Canada, and there are more than 175 agencies in foreign countries. More than 1,400 traveling salesmen are regularly employed. The company's products are virtually as well known in some foreign countries as in the United States. In England, for instance, the company maintains a force of approximately 200 traveling salesmen, or more than any British food concern.

The company's representatives travel through all channels of trade, buyers and salesmen circling the globe. Heinz spice buyers recently returned from a 40,000 mile trip through the Orient. Heinz products are distributed to every civilized country of the world. Incidentally, wherever the 57 Varieties are known, they are associated with Pittsburgh.

Standards and principles have stimulated the growth of the business. The founder firmly believed that anyone who furnishes food for the public is in a position of trust

and honor-bound to see that the food is absolutely pure and wholesome. This position has led the company to engage [fol. 35] in extensive research work, maintaining the largest private food research laboratory in the world.

The part played by science in the selection and preparation of our foods is of primary importance. Discoveries and progress have not been spectacular, or dramatic, as in the case of electricity, the radio, the telephone and other wonders of the age, but they have been consistent and of great benefit to mankind. The underlying principles of nutrition are being discovered, and because of our new knowledge, we are eating more rationally, which will prolong life and prevent much illness.

To the organized food industry must go much of the credit for our advances in this knowledge. Such research is costly and it is principally through the willingness of the industry to underwrite the expense of such inquiry that it is possible to carry it on. Some of the knowledge so gained is profitable to the industry, but all of it is profitable to the world at large.

Early in the last century, science made its first distinct contribution to the food preserving industry when Nicholas Appert, at the behest of Napoleon, evolved a method of preserving food by sealing it hermetically and sterilizing it after sealing by exposing it to a heat treatment. Food was preserved before this time, but always by some change in its nature, which was not always desirable. Drying of food has been practiced as long as we have any records, and it is the method used by nature itself in preserving seeds and various plants. The process of salting dates back to antiquity and the use of fermentation is mentioned in the Old Testament. These methods, satisfactory for centuries, have been greatly improved upon and superseded during the last hundred years by the discoveries of science.

As soon as science determined the cause of the spoilage of foods, chemists set to work to prevent such spoilage by the use of what are now called "artificial preservatives". Benzoate of soda, salicylic acid, boric acid and such compounds were found to be very effective and came into use in the food industry during the latter part of the nineteenth century. Some unscrupulous manufacturers began to use low grades of raw materials and with the aid of such preservatives, put out adulterated goods that were positively

harmful to the health of the consumer. Other manufacturers who had at heart the interests of the people, and the [fol. 36] future of the industry, along with women's clubs and government chemists headed by Dr. Harvey W. Wiley, led a crusade against the use of harmful preservatives and coloring matter and brought the Pure Food Act of 1906 into being.

H. J. Heinz Company was very active in its efforts to secure the enactment of this pure food law. The company believed, first, that the health of the consumer should be protected, and, second, that the production of PURE foods would be beneficial to the industry. This has proven to be the case, for the food manufacturing industry has made greater strides in the past 20 years than it made in the previous century.

One of the most important steps in the preparation of good food is proper sterilization and its success depends upon the quality of the containers. H. J. Heinz Company, early in its history, applied itself to the perfection of bottles and cans to meet all requirements. It established its own bottle and tin can factories. Sanitary cans have been developed. They are so made that no solder can come into contact with the contents of the can, thus preventing contamination. Lacquered and protective coverings have been produced to prevent the action of the food on the metal of the cap or can. Methods of sealing packages under a vacuum have been perfected, resulting in better preservation methods. Science is still at work on the canning and bottling problem.

For many years the company has employed a large staff of chemists and bacteriologists whose duty it is to check all raw materials used in the production of the 57 Varieties, even to the selection of the seed and the development of new and improved processes and products.

Peanut Butter offers an example of a process improvement entirely due to what might be termed "pure" science. Every year, since the World's Fair at Chicago, Peanut Butter has been a popular addition to the American diet, especially of children. As peanuts are half oil, a large quantity of this oil usually separated itself from the butter when it stood awhile after grinding, and as much of the flavor and goodness of the product are in the oil, this was a serious defect. Several years ago, Sabatier, while work-

ing in his laboratory in France, succeeded in hooking an atom of hydrogen into a molecule of oil, causing the oil to change its texture and appearance, but otherwise remain the same. By applying the Sabatier theory, a process patented and controlled by the Heinz Company has been [fol. 37] worked out, and the separation of the oil is prevented. The product is thus given a finer creamier body than before, and it does not have the sticky quality.

Time is no barrier to research work. We have recently introduced a new cereal product, Heinz Rice Flakes. The development of this product covers a period of ten years or more. The prevalence of intestinal disturbances and sluggishness has been a generally recognized fact and science has attributed much of this trouble to the methods followed in preparing food. If the cause of this trouble could be removed, a distinct advance could be claimed for the food industry. It must be done in such a way that people would welcome it, however, for their habits of eating are firmly fixed and a change comes slowly. The company has been interested in this problem for a long time and set about to solve it through its research department and its fellowship at the Mellon Institute of Industrial Research. Starting with the fact that cellulose is nature's own best aid in overcoming this difficulty, an interesting product has been developed, which meets with all requirements. Cellulose, or moisture-absorbing roughage, is that part of everything which grows in the vegetable kingdom and gives it form and structure. It is not digestible to any great degree, but is a moisture-absorbing element in food. Man was made by nature, however, to subsist mostly on vegetables, cereals and fruits and requires a certain amount of cellulose or roughage, which is not digested and absorbed by the body, to maintain the proper functioning of the digestive tract. The harsh taste and dark color of whole grain cereals caused people to desire such refinement of these foods that the cellulose is lost in the milling. Large supplies of green vegetables and fruits are not always available. The result is an actual deficiency of cellulose or roughage in the diet, and failure of the intestinal tract to properly function, causing illness, both serious and minor.

Research produced a proper method of obtaining from food materials, cellulose in a purified state, in which it is

tasteless and odorless and lacks the harshness. In this state it can be incorporated in other food products without detracting from their value in any way and the consumer has an essential constituent of diet without eating anything distasteful. By this process, Heinz Rice Flakes, a prepared cereal with a new flavor, have been produced.

[fol. 38] Every product of the company shows the effects of the scientists' work and knowledge. Much time might be allotted to a discussion of vitamins. Research has determined that the heating and cooking of foods in hermetically sealed containers causes less destruction of vitamins than would occur if the foods were exposed to the same heating and cooking operations in an open vessel. These and many other facts have been determined and scientists are still working daily to improve the nation's food supply.

As the business developed, it was found that Allegheny County could not produce all the crops that the company needed. This accounts for the string of plants that extends across the continent and into Canada, as well as England and Spain. The founder had resolved "to protect the consumer by owning the product all the way from the soil to the table, free from chemical, coloring matter or other substitute", and this led to the propagation of seeds and plants that would produce the best tomatoes, pickles and other raw materials, the building of greenhouses and nurseries, and the operation of experimental farms.

H. J. Heinz took as much pleasure in building men as he did in building his business. He seemed to have a power to inspire men to do things they themselves did not know they could do. His intense interest, sympathy and understanding bound men to him. His sense of fairness, of helpfulness, and his great capacity as a teacher soon developed leaders who were capable of helping him direct his entire organization, and he never stopped until he made his business the greatest of its kind. So strong did he build and develop his assistants, that he was enabled, for many years before his death, to spend more than half of his time in civic, charitable and religious affairs. His entire Board of Directors was and is composed of men who started as boys in the various departments of the business.

He was a pioneer in industrial relations with his employees. He believed that every laborer was worthy of his

hire, but believed that an employer owed an employe more than mere wages, namely, a sincere interest in his welfare and development. Before such a thing had been heard of, he built an auditorium in the midst of the main plant for the recreation and entertainment of his employes. He established dining rooms when they were unknown in factories, [fol. 39] sewing classes and cooking schools for girl employes (for over half of his employes were women). A gymnasium and a swimming pool, roof gardens and educational evening classes were only a few of the many things that were instituted. More than 30 years ago he established a factory newspaper to keep the employes all over the world in some kind of relationship with each other. In the early days premiums were paid on increased output in many departments of the business and years ago group life insurance was procured and benefit associations established. Employes' clubs were organized in every part of the world. He did not call this "charity" but "good business", the proof of which is found in the fact that in its more than fifty-eight years of existence, the Company has been involved in no dispute or controversy with its employes respecting wages or working conditions. A few years ago an international radio banquet, the first of its kind, was given on the occasion of the dedication of a memorial statue presented through the gifts of employes to the Board of Directors in memory of the founder and their love for him.

The founder believed that heart power is mightier than horse power, and therein lay one of the secrets of his success.

The question has been asked: What have his successors done to carry on the work of the founder, the beginning of which we have just recited, for, as he himself said, the business was only in its infancy when it reached 50 years of its existence. It now employs more than 11,000 employes, almost double the number it had at the time of his death eight years ago, and its invested capital is two and a half times as much as it was at that time, but the successors do not take credit to themselves for these accomplishments, but rather pay tribute to the teaching of their former leader. His foundation principles were so good, his policies so right, his vision so big, that it was only natural for success to continue.

The growth of the business has demonstrated the value of principles and standards.

All of the affairs of the company are directed from Pittsburgh. There must be a good reason for the growth of the Pittsburgh plant and for continuing our main factory in this city.

When the plant was moved from Sharpsburg to Pittsburgh, it might have been rebuilt at Chicago or some other point that is more central from a geographic measurement. [fol. 40] Or again, when it was moved from the heart of the city to the North Side, it might have been rebuilt in the central west. But it was not. It remained in Pittsburgh, and has grown and expanded. Pittsburgh presented advantages which no other city could offer.

We are aware that within 12 hours' ride of Pittsburgh, there are 78,000,000 people, a great consuming public. Could anyone ask for a better distributing point? On one side of the plant is the Pennsylvania Railroad and on the other, the B. & O. The Allegheny River flows along the southern boundary, and now offers shipping facilities of high value.

The officers of the company were recently called upon to determine the location for a plant for the making of a new cereal product, Rice Flakes. The plant might have been located where the raw materials are produced, or some other place, but Pittsburgh was selected. The product is being made here, in the newest and largest building we have, and Pittsburgh thus has an entirely new industry.

Pittsburgh offers adequate banking facilities. Dependable power is as cheap here as any place, and there are various other reasons for the progress of industry in this district.

I would pay tribute to Pittsburgh for the advantages it offers to all industrial enterprises. Its spirit of progress is more dominant now than in bygone years. Its past is merely an indication of its future and I believe the present generation will give a good account of its use of the district's great resources.

I have briefly reviewed the past of an industry. But it is not living in or on its past,—it could not do so; it would die. It is living in the present and future, building today and planning for tomorrow, for it must have vision. Carnegie, Westinghouse, Jones, Laughlin, Armstrong, Heinz,

and other pioneer industrialists had great vision, but it is doubtful whether even they foresaw Pittsburgh and its industries in their present greatness. Our vision cannot be too broad, for the future holds limitless possibilities of development and progress.

The past is fixed. We honor those who have gone before us. We record their accomplishments and achievements, their faith, their vision. The present is ours to make of it what we will.

[fol. 41] BOARD EXHIBIT No. 5

Case No. VI-C-81—Filed November 15, 1937

Amalgamated
Meat Cutters and Butcher Workmen
of
North America

A. F. of L.
Doth Grant This

Certificate of Affiliation

(Label) (Label)

To George Spisic, Walter Alinsky, Marie Muskardin, Agnes Gajewski, John Koontz, Margaret Martinek, Marie Milewski, Sophia Kos, Josephine Sabatiello, Mathew Aliel, Chester L. Jutowski, M. Joseph Dembecki, Stanley Niziol, J. H. Parelakovish.

Town, Pittsburgh. State, Penna.

Name of Organization, Canning & Pickle Workers, No. 325, and to their successors legally qualified to constitute the Union herein named and known under the title of

Amadgamated Meat Cutters and Butcher Workmen of North America, A. F. of L.

For the purpose of a thorough organization of the trade, and a more perfect Federation of all Trades and Labor Unions. And the Union being duly formed, is empowered and authorized to initiate into its membership any person or persons in accordance with its own laws. And to conduct the business affairs of said Union in compliance with the best interests of the trade and labor in general. The autonomy of the Union is hereby obtained and secured.

Provided, that the said Union do conform to the Constitution, By-Laws, Rules and Regulations of the Amalgamated Meat Cutters and Butcher Workmen of North America, and in default thereof, or any part thereof, this Certificate of Affiliation may be suspended or revoked according to the laws of the Amalgamated Meat Cutters and Butcher Workmen of North America. And should the said Local Union No. 325 be dissolved, suspended or forfeit this Certificate of Affiliation, then the persons to whom this Certificate of Affiliation is granted, or their successors, bind [fol. 42] themselves to surrender the same to the International Secretary-Treasurer, with such other property as shall properly belong to the Amalgamated Meat Cutters and Butcher Workmen of North America, on demand. And further, in consideration of the due performance of the above, the Amalgamated Meat Cutters and Butcher Workmen of North America does hereby bind himself to support the said Local No. 325, Town of Pittsburgh, State of Penna., in the exercise of all its rights, privileges and autonomy as an affiliated Union.

In Witness Whereof, We have subscribed our name and affixed the Seal of the Amalgamated Meat Cutters and Butcher Workmen of North America, this eleventh day of May, A. D., One Thousand, Nine Hundred and Thirty Seven.

Patrick E. Gorman, President. Dennis Lane, Secretary-Treasurer. (Seal.)

BOARD EXHIBIT No. 6

Case No. VI-C-81—Filer November 15, 1937

Memorandum of Agreement

By and between the H. J. Heinz Company hereinafter called the Employer of the Local Union No. 325 of the Amalgamated Meat Cutters and Butcher Workmen of North America, which shall cover all employees with the exception therefrom, of Inside Office Force, Officials, persons who are Foremen, (not working Foremen) and Truck Drivers.

Clause 1. The Company shall recognize the Representa- [fol. 43] tives of the Local Union No. 325 as the sole bar-

gaining agent for the purpose of collective bargaining, in the matter of Employer-Employee relationship, of wages, hours of labor and working conditions.

Clause 2. The Local Union No. 325 agrees to exert its influence as a member of Organized Labor to promote the business of the Employer, and endeavor to increase the sales of the Company.

Clause 3. As the majority of employees have chosen the Representatives of the Local Union as the bargaining unit, all employees covered by this agreement shall be and remain while employed by the above Employer, members of the Local Union.

Clause 4. As the membership of the Local Union consists of persons in the Employer's Industry, it is agreed when a vacancy exists or additional help is required, the employer will notify the Representatives of the Local Union, and give preference to such employees as are presented by the Local Union, except when the person presented by the Local Union is known to be unqualified to fill the position, but in event no members of the Local Union are available, the Employer shall reserve the right to employ any person they desire, and such persons as are employed shall become members of the Local Union if re-tained for a period of more than 15 days.

Clause 5. The Local Union Representatives shall be given reasons in writing for the dismissal of any member on demand, and if investigations prove such dismissal has been unfair or discrimination shown, such members shall be reinstated with compensation for any time lost.

Clause 6. When any matter affecting the members of the Local Union shall arise, it shall first be brought to the attention of the Plant Superintendent, and if a settlement cannot be reached the Employer then agrees to meet with the Representative of the Local Union within (5) days after notice has been presented in writing and endeavor to adjust the matter.

Clause 7. Should the representatives of the Local Union and the Employer fail to settle any matter within (3) days, it shall be referred to a Board of Arbitration at once, said Board to be chosen in the following manner, two by the Employer, two by the Local Union, and a fifth appointed by, the

[fol. 44] U. S. Department of Labor, and the findings of this Board shall be binding on both the employer and the Local Union.

Clause 8. There shall be no walk-outs, lock-outs, strike or any stop of work during arbitration.

Clause 9. Plant and Department work shall be divided as equally as is humanly possible among the employees.

In promotion and lay-offs, Department seniority shall prevail, and where skill is exempted it shall be mutually agreed on or placed to arbitration.

Employees who have been laid off shall be returned to work before new employees are hired.

Clause 10. Eight hours shall constitute a days work or forty hours in any week, and at any time working for more than eight hours in any one day, or forty hours in any one week, shall be paid for at time and one half.

Watchmen, Firemen, Refrigeration engineers, shall not work more than 42 hours a week.

Clause 11. No employees are ordered to report for work then sent home through no fault of their own, a minimum of two (2) hours pay will be granted, and such hours counted as part of the regular week.

Clause 12. After one years continuous service, one weeks vacation with pay shall be granted to all employees, and after five (5) years service, two (2) weeks vacation with pay shall be granted, and after 15 years service for females a three (3) weeks vacation with pay shall be granted, and for males after 20 years service, also three (3) weeks vacation with pay shall be received, and an minimum of 40 hours pay shall be granted for vacation allowance.

Clause 13. The minimum wage shall not be less than 52c for females, and 62½c for males, and an adjustment of 10% increase in the pay roll shall be granted to all employes within 30 days.

Clause 14. This agreement shall remain in force for a period of 12 months — to — from date of acceptance and signatures of both Employer, and employees, and in case of any changes made either party, they shall make it known 30 days before expiration, otherwise, this agreement is still in force and binding to both parties.

[fol. 45] BOARD EXHIBIT No. 7

Case No. VI-C-81—Filer November 15, 1937

I hereby apply for membership in the Heinz Employees Association formed for the purpose of carrying on collective bargaining with the management of H. J. Heinz Company. It is understood that the representatives of the organization shall be employees of H. J. Heinz Company. The organization is to be affiliated with any other organization and is to be entirely independent of the management.

——— ———.

BOARD EXHIBIT No. 8

Case No. VI-C-81—Filer November 15, 1937

(Stub)
No. 1108 May 21, 1937
Name: Joseph Rogale
Address: 51 Noster St.
Department: Bean Baking
I agree to abide by the Constitution and By-Laws of the Heinz Employees Association.

——— ———, (Signature of Member.)

No. 1108

Union Membership Card

May 1937 to May 1938

Heinz Employees Association

Pittsburgh, Pa.

Joseph Rogale,
Member.
W. A. Mohl,
Secretary or Treasurer.

.....

(Signature of Member)

[fol. 46] BOARD EXHIBIT No. 9

Case No. VI-C-81—Filed November 15, 1937

I hereby apply for membership in the Heinz Employees Association formed for the purpose of carrying on collective bargaining with the management of H. J. Heinz Company. It is understood that the representatives of the organization shall be employees of H. J. Heinz Company. The organization is not to be affiliated with any other organization and is to be entirely independent of the management.

Name .....

Dept. .....

BOARD EXHIBIT No. 10

Case No. VI-C-81—Filed November 17, 1937

October 25, 1937.

To the Members of the Heinz Employees Association:

We again want to make it clear to you as to why we are continuing our association. In a previous letter it was stated that we were organized for our own protection and for the welfare of our employees and that we were going to continue for the same reasons.

Your association has been able *in* increase its membership to a total of 1057 paid up members, in spite of the false propaganda spread by our opponents. This evidence shows that the Canning and Pickle Workers Union, Local No. 325 did not get everything they had promised to get for the employees of H. J. Heinz Company prior to June 8, 1937.

They are now threatening the employees with the loss of their job if they do not join their organization and pay up their dues. Any union that has to use force or coercion [fol. 47] to get members or to collect dues cannot long exist.

Your association was founded on American Principles, which are: life, liberty, and the pursuit of happiness. We have not made any attempt to exercise any power that is

not ours, nor have we ever made any threats or promises to anyone in order to get them to join our association.

This is still America, and as Americans we still have the right to make up our own minds instead of being dictated to by a small minority; because the Relations Labor Act gives the right to the people of this country to belong to whatever organization they wish to belong to.

Therefore, do not let the actions of the Canning and Pickle Workers Union, Local No. 325 force you into joining their organization.

Heinz Employees Association.

BOARD EXHIBIT No. 11

Case No. VI-C-81—Filed November 16, 1937

Reports have come to us that our employees are being told they must join a Union in order to continue in our employ. This is not the truth. There has been no change in our policy. We believe in the open shop which gives every man a fair chance. No employee needs to belong to any Union or pay dues to anyone to work for us.

H. J. Heinz Company.

June 14, 1937.

[fol. 48] BOARD EXHIBIT No. 13

Case No. VI-C-81—Filed November 16, 1937

Notice

Reports have come to us that our employees are being told they must join a Union in order to continue in our employ. This is not the truth. There has been no change in our policy. We believe in the open shop which gives every man a fair chance. No employee needs to belong to any Union or pay dues to anyone to work for us.

H. J. Heinz Company.

Oct. 18, 1937.

BOARD EXHIBIT No. 15

Case No. VI-C-81—Filed November 16, 1937

Pittsburgh Post-Gazette, Saturday, May 29, 1937

To the Employees of H. J. Heinz Company

Our Pittsburgh plants have been practically closed since last Tuesday, due to a strike instituted by a Union which calls itself the Canning & Pickle Workers' Organization, A. F. of L. Local No. 325. A Committee headed by an organizer of that Union presented to us and demanded that we sign a contract which would make that Union the exclusive representative of all our employees for collective bargaining, and which provided, among other things, for a closed shop. We asked this Committee to give us some proof that the majority of our employees belonged to this Union and it refused to give us any evidence of its membership. We declined to sign the contract which it presented and thereupon pickets were established around our plant, preventing employees from going to work. Later on, a picket line was stationed around the office building, preventing [fol. 49] our clerical force and officials of the Company from entering their offices.

On the same day, also, we were presented with a demand by another union of our employees, called the Heinz Employees Association, that it be recognized as the exclusive bargaining agent for all of the employees. We made a similar request of this Union to give us evidence that it was the choice of the majority of our employees. In answer to our request, this Union has submitted to us written petitions, signed by 1,383 of our employees, expressing their preference for this organization and their designation of it as their agency for collective bargaining. We have made test checks of the signatures on this petition, comparing them with our employee records, and the signatures appear to be genuine and represent about three-fourths of our employees.

Honorable Cornelius D. Scully, Mayor of Pittsburgh, of his own accord, endeavored to settle the strike by submitting the question to an election, under the supervision of some governmental agency, in which all of our employees, excluding salaried employees, would be given a chance to

choose by secret ballot the organization which they wish to represent them for purposes of collective bargaining. To avoid delay, it was suggested by the Mayor that it be held immediately with the consent of all parties. The Heinz Employees Association has indicated that it is agreeable to an election in which the names of both Unions would appear on the ballot, as the Mayor has suggested, and the Company is, of course, willing that such an election be held. However, the Canning & Pickle Workers' Organization has flatly refused to submit the question to such an election, demanding that it be the only Union named on the ballot, which would not be a fair test of the strength of the two Unions.

We do not have, therefore, any way of definitely determining the will of the body of our employees with respect to the organization they desire to represent them. In view of the fact that the Canning & Pickle Workers Union, which has caused the strike, has refused to give us any evidence of the extent of its membership and declines to submit the question to a fair election, in spite of the appeal of the Mayor so to do, we can only conclude that it does not have the support of a majority of our employees. After careful [fol. 50] checking of the petitions presented to us, signed by 1,383 of our employees, we are convinced that the Heinz Employees Association is the Union which is chosen by more than a majority of our employees and we have therefore agreed to recognize it as the collective bargaining agency for our employees. We have so advised this Union and intend to meet with its representatives as soon as possible to consider any problems or demands that may be presented. We will not, however, make an agreement with any Union for a closed shop, for, while we recognize the rights of our employees to select their own Union, we do not feel that we should force any employee to join a Union in order to hold a job with us.

The Heinz Employees Association has expressed itself as in favor of peaceful negotiation of grievances and as opposed to the violence and intimidation which have characterized the present strike.

It is generally known that the H. J. Heinz Company has had an uninterrupted record of peaceful labor relations with its employees for a period of 68 years. We had no knowledge of any grievances or dissatisfaction on the part of any employee and we sincerely regret that many of our

faithful employees of long standing have been deprived, by the tactics of the picket lines surrounding our plants, of their right to work. We will do everything in our power to protect and defend our employees, but until the police authorities take some steps to protect our employees in their entrance to the plant, we do not feel like calling upon them to risk personal injury to themselves or their families by returning to work.

H. J. Heinz Company.

[fol. 51] BOARD EXHIBIT No. 15

Case No. VI-C-81—Filed November 15, 1937

Pittsburgh, Pa., June 1, 1937.

To our Employees:

As we advised you in an open letter published in the newspapers a few days ago, we have recognized the Heinz Employees' Association as the collective bargaining agent for our employees. The A. F. of L. Union, which has been picketing the plant, refused to submit to an election in which all our employees might be given an opportunity to choose between the Heinz Employees' Association and the A. F. of L. Union. We had to act, therefore, on the basis of a petition in which 1,383 of our employees designated the Heinz Employees' Association as the Union of their choice. Following that recognition, we have had numerous conferences with a Committee of this Association, of which the following officers were present:

I. C. Bennett
John Ubrey
William Ubrey
Frank Kirchner
Edward Grzonkowski

also the following divisional representatives:

Division 1: William Sipple—Bottling & Chow Departments.

Division 2: Bernard Rooney—Spaghetti & Macaroni Depts.

Division 3: Jim Douglas—Can Room.

Division 4: Harry Mendel—Garage.

Division 5: John Rupert—Local Shipping, Carload, Car Unloading, Branch House Stock and Export Shipping Depts.

Division 6: George Peck—Bean Department.

Division 7: William Mohl—Power Building.

Division 8: Fred Nolle—Ketchup Labeling, Export Packing, Peanut Butter, Mayonnaise, Soup Packing Depts.

Division 9: Jack Yingling, John Williams (Alternate) Heat, Light & Power and Engineering Depts.

Division 10: John Elzer—Vinegar, Pickle, Cooperage and Paint Depts.

Division 11: Lillian Thomson—Preserve, Mustard, In-
[fol. 52] spection & Cellar Storage.

Division 12: Harry Zimmerman—Tank, Box, Labor, Janitor & Watchmen Depts.

Division 13: Charlie Zufer—Auditorium, Quality Control, Cereal & Advertising Stock.

Division 14: John Beck—Pipe Shop & Electrical Dept.

Division 15: Arthur Ramming—Machine & Millwright Depts.

As a result of various demands made by this Committee, and extended negotiations over the last few days, we have agreed to certain changes and adjustments in our wage scale and employment policy as follows:

1. Ten percent increase in all hourly rates, piece work, bonus and premium payments.

2. The vacation plan has been adjusted so that every employee with one year's service will receive one week's vacation with pay, as against the former plan which provided vacations only after two years' service.

3. The regular schedule of working hours shall be 8 hours per day and 40 hours per week for all employees, excepting watchmen, drivers, boiler house, engine room and miscellaneous service employees, who shall receive at least a full 24 hour free period every week.

4. Any employee requested to report to work is guaranteed at least 4 hours continuous work.

5. Employees working on perishable products will be paid on the basis of 50% of their regular hourly rates for any waiting period occurring before production begins.

6. Employees working on non-perishable products will be paid on a full time basis for any period of waiting occurring before production begins.

7. Employees working on any product will be paid full time for time lost due to an interruption of an operation if other work cannot be found.

8. Piece workers are guaranteed earnings equal to their hourly wage by specific jobs.

9. A new schedule of pay days is being developed so that all pays can be made at the earliest possible date after the end of the pay period.

10. A satisfactory plan for the adjustment of all employee-management problems is being developed, the details to be [fol. 53] announced at as early a date as possible.

While we were unable to grant all the demands of this committee, we feel that the understanding arrived at is fair both to us and our employees, and when the plants re-open, these adjustments will go into effect.

As you know, the picketing of our Pittsburgh plants is being carried on by the union affiliated with the American Federation of Labor, so we are not able to resume the operation of our plants until there is an assurance of adequate protection for those who wish to return to work and we realize the injustice of a small group of persons preventing our employees from going to work. We believe that the support of the members of the Heinz Employees' Association will be an important factor in securing free access to our property.

H. J. Heinz Company.

P. S.—Pay checks will be distributed Wednesday, June 2, 1937, at 3 P. M., in the Sarah Heinz House.

BOARD EXHIBIT No. 16

Case No. VI-C-81—Filed November 17, 1937

Memorandum of Understandings

It is agreed that as a means of ending the dispute between the employees of the H. J. Heinz Company, members of the

American Federation of Labor, Local No. 325, Canning and Pickling Workmen's Union and the H. J. Heinz Company:

That an election be held Tuesday, June 8th, to determine the collective bargaining agency for production and maintenance employees. The plant to remain closed until after such election is held. After the result is certified, H. J. Heinz Company will open the plant and the employees will [fol. 54] return to work pending negotiations.

The ballot shall have thereon the name of the American Federation of Labor, Local No. 325, Canning and Pickling Workmen's Union and the Heinz Employees Association.

The Company agrees to recognize the organization receiving the majority of eligible votes cast as the exclusive bargaining agency and will within ten (10) days, after announcement of election results, commence negotiations for the purpose of reaching an agreement affecting wages, hours and working conditions.

When the employees return to work, all shall be reinstated in their former positions without discrimination for having participated in the strike or for any other union activity. There shall be no intimidation or coercion used against any employee either on or off the property of the Company for union membership.

Election shall be conducted by Ernest C. Dunbar, Regional Director of the National Labor Relations Board in accordance with the standard rules and regulations of the Board in their conduct of elections.

All production and maintenance employees, including storage and warehousemen, except foremen, assistant foremen, salaried employees and office help, shall be eligible to vote.

In the cases of any challenged votes by either party, the Director of the Regional Labor Board shall decide eligibility.

H. J. Heinz Co., H. A. Reed, H. E. Riley. Cannery & Pickle Workers, Frank Novak. Heinz Employees Assn., I. C. Bennett.

June 4, 1937.

[fol. 55] BOARD EXHIBIT No. 17

Case No. VI-C-81—Filed November 17, 1937

BEFORE THE NATIONAL — RELATIONS BOARD
IN RE H. J. HEINZ COMPANY

Stipulation

It is understood and agree- that the election to be held for the employees of the H. J. Heinz Company on Tuesday, June 8, 1937, is a consent election as agreed npon between the parties to this stipulation.

It is also understood and agreed that the holding of this election is without prejndice to the rights of any parties who may have filed affidavits before the National Labor Relations Board.

Canning & Pickle Workers, Frank Novak. H. J. Heinz Co., H. E. Riley. Heinz Employees Assn., I. C. Bennett.

June 4, 1937.

BOARD EXHIBIT No. 18

Case No. VI-C-81—Filed November 17, 1937

Agreement

This agreement, dated the — day of ——, 1937, between the H. J. Heinz Company (hereinafter referred to as the "Employer"), and the Canning & Pickle Workers Local Union No. 325 of the Amalgamated Meat Cutters and Butcher Workmen of North America, (hereinafter referred to as the "Union").

Section 1. It is the intent and purpose of the parties [fol. 56] hereto that this Agreement will promote and improve industrial and economic relationships between employees contemplated in this Agreemen- and the Employer, and to set forth herein the basic agreement governing rates of pay, hours of work, and conditions of employment to be observed between the parties hereto.

The term "Employee", as used in this Agreement, shall include all Pittsburgh factory, warehouse and garage em-

ployees, with the exception of Foremen and Assistant Foremen, who are on a monthly basis, and Policemen, Truck Drivers, and Office Employees.

Section 2. The Employer recognizes the Union as the sole bargaining agent for the purpose of collective bargaining for all of its employees, as defined above. The Employer recognizes and will not interfere with the right of its employees to become members of the Union. There shall be no discrimination, interference, restraint, or coercion by the Company or any of its Agents against any employees because of membership in the Union.

As the majority of the employees in the Election conducted by the National Labor Relations Board on June 8, 1937, have chosen the Union as its sole bargaining agency, all employees covered by this agreement shall be and will remain, while employed by the Employer, members of the Union.

Section 3. As the membership of the Local Union consists of persons in the Employer's industry, it is agreed that when a vacancy exists or additional help is required by the Employer, the Employer will notify the representatives of the Local Union and give preference to such prospective employees as are presented by the Local Union, except when the prospective employee or employees presented by the Local Union are known to be unqualified to fill the position or positions; but, in the event no members of the Local Union are available, the Employer shall reserve the right to employ any person it desires, and such persons as are employed shall become members of the Local Union if retained for a period of more than thirty (30) days. However, before any new employees are hired, employees who have been laid off shall be returned to work.

Section 4. Effective ——, 1937, the minimum wage, whether on an hourly, piece-work, or salary basis, shall be not less than Fifty-Two Cents (52c) for females, and Sixty-[fol. 57] Two and One-Half Cents (62½c) per hour, respectively, whether on an hourly, piece-work, or salary basis. Females who earned more than 52c and males who earned more than 62½c per hour prior to the making of this Agreement, shall receive an increase of twenty percent (20%) whether on an hourly, piece-work or salary basis, as the case may be.

Female employees, who whether on an hourly, piece work or salary basis made less than 52c per hour prior to this agreement, but who would receive more than 52c per hour when 20% is added to their basic wage rate shall receive the 20% increase.

Male employees, who whether on an hourly, piece work or salary basis made less than 62½ per hour prior to this agreement, but who would receive more than 62½c per hour when 20% is added to their basic wage rate shall receive the 20% increase.

Section 5. Effective ——, 1937, there shall be established an eight (8) hour day, forty (40) hour week, and time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day, or for all of the time in excess of forty (40) hours in any one week. Double time shall be paid for work on Sundays and Holidays.

The employee or employees shall not be paid both daily and weekly over-time for the same hours so worked.

Watchmen, Firemen and Refrigeration Engineers shall not work more than forty-two (42) hours per week.

When there is a cessation in work by reason of a breakdown, or for any other reason, or when employees who are ordered to report for work by the Employer and then find that no work is available are to be paid for such time at their regular rate of pay, and such hours are to be counted as part of the regular work week. In such event, if less than two (2) hours are consumed, the Employee or Employees shall nevertheless be paid a minimum of two (2) hours pay.

Section 6. Each employee, who prior to July, 1937, was continuously in the service of the Employer one (1) year or more, shall receive one (1) week's vacation with pay. Such vacation to be taken in a single period.

Each employee, who prior to July 1, 1937, was in the service of the Employer five (5) years or more, shall receive two (2) week's vacation with pay.

Each female employee, who prior to July 1, 1937, was [fol. 58] in the service of the Employer for fifteen (15) years or more, shall receive three (3) weeks' vacation with pay.

Each male employee who prior to July 1, 1937, was in the service of the Employer twenty (20) years, or more, shall receive three (3) weeks' vacation, with pay.

Those who are granted vacations will be paid on their average rate of earnings per hour, whether they be paid on an hourly, piece-work or salary basis, for the two pay periods immediately preceding their vacation.

The total hours of vacation pay will be the average hours they worked per week during that period, but not less than forty (40) hours, nor more than forty-eight 48) hours per week.

Section 7. Seniority.—It is understood and agreed, however, that in all cases of promotion or increase, or decrease of forces, the following factors shall be considered and where factors (b), (c), (d), and (e), are relatively equal, length of continuous service shall govern.

(a) Length of continuous service.
(b) Knowledge, training, ability, skill, and efficiency.
(c) Physical fitness.
(d) Family status, number of dependents, etc.
(e) Place of residence.

Section 8. Adjustment of Grievances.—Should differences arise between the Employer and the Union or employees employed by the Employer as to the meaning and application of the provisions of this Agreement, or should any local trouble of any kind arise in any department, there shall be no suspension of work on account of such differences, but an earnest effort shall be made to settle such differences immediately in the following manner:

First, between the Steward representing the aggrieved employee and the foremen of the Department involved.

Second, between a member or members of the Grievance Committee designated by the Union, and the General Superintendent or Manager of the plant.

Third, between a member or members of the Grievance Committee designated by the Union, and the foremen and Superintendent of the Department.

Fourth, between the representatives of the National Organization of the Union and the representatives of the Ex-
[fol. 59] ecutive of the Corporation; and

Fifth, in the event that the dispute shall not have been satisfactorily settled, the matter shall then be appealed to an impartial umpire, to be appointed by mutual agreement of the parties hereto. The decision of the umpire shall be

final. In the event that the parties cannot agree upon the selection of an umpire, then the United States Department of Labor shall be requested to appoint such an umpire.

Specified periods shall be agreed upon between the Grievance Committee and the General Superintendent or Manager of each plant for the presentation of grievances hereunder. Provided, however, that matters pertaining to discharge or other matters that cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provisions.

The Grievance Committee for each Department shall consist of not less than one (1) employee of that Department, and not more than (2) employees of the General Grievance Committee designated by the Union, who will be afforded such time off, with pay, as may be required.

First, to attend regularly scheduled committee meetings;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting; and

Third, any member of the Grievance Committee shall have the right to visit departments other than his own at all reasonable times for the purpose of transacting the legitimate business of the Grievance Committee, after notice to and permission from his Department Superintendent or his designated representative.

The actual number of members of the Grievance Committee at each plant shall be mutually agreed upon between the General Superintendent or manager of the plant and the Union.

Section 9. In the event an employee shall be discharged from his employment from and after the date hereof, the Union shall be given reasons in writing for the dismissal, on demand. If the employee believes he has been unjustly dealt with, such discharge shall constitute a case arising under the method of adjusting grievances herein provided. [fol. 60] In the event it should be decided under the rules of this Agreement that an injustice has been dealt the employee with regard to the discharge, the employer shall re-instate such employee and pay full compensation at the employee's regular rate for the time lost. All such cases of

discharge shall be taken up and disposed of within five (5) days from the date of discharge.

Section 10. The Employer shall continue to make reasonable provisions for the safety and health of its employees at the plant during the hours of their employment. Protective devices, wearing apparel and other equipment necessary to properly protect employees from injury shall be provided by the Employer in accordance with the practice now prevailing in each separate department. Proper heating and ventilating systems shall be installed where needed.

Section 11. The representative or representatives of the Union shall have the right to come on Company property for all legitimate purposes.

Section 12. Where alleged inequalities in wage rates prevail, the matter may be taken up for Local department adjustment, and settlement made through the grievance procedure.

Section 13. Joint conferences between Representatives of the Corporation and of the Union shall commence in Pittsburgh on June 1, 1938, for the purpose of negotiating an Agreement with regard to wages, hours and working conditions, to take effect upon the expiration of this Agreement.

Section 14. The following days shall be considered holidays, during which days there shall be no regular production work, except in cases of continuous operations, on:

July 4th,
Memorial Day,
Labor Day, (Subject to perishable exception),
Thanksgiving Day,
Christmas, and
New Years Day.

Section 14. This Agreement shall remain in full force and effect until —— ——, ——, inclusive.

H. J. Heinz Company, by —— ——, President. Canning & Pickle Workers Union No. 325, by —— ——, Chairman; —— ——, Secretary-Treasurer; —— ——, Regional Director.

[fol. 61] BOARD EXHIBIT No. 19

Case No. VI-C-81—Filed November 17, 1937

H. J. Heinz Company

July, 1937.

Notice to All Employees:

Following the recent election held under the supervision of the National Labor Relations Board, in which the Canning and Pickle Workers' Local Union No. 325 was selected as the collective bargaining agency for our employees, we have had meetings with a committee from that organization and after several weeks of negotiation, have agreed with them as follows:

1. Wages.—Effective July 1, 1937, a ten per cent (10%) increase shall be made in all presently established rates for hourly, piece work, and bonus production. No increase in hourly rates, however, shall be less than five cents (5c) per hour.

Effective July 1, 1937, the standard minimum hourly rates for male employees shall be 60½c per hour and for female employees shall be 45c per hour. The foregoing rates are subject to the following exceptions:

(a) New employees for the first month of their employment may be assigned rates less than the standard rates above mentioned, but such rates shall not be more than five cents (5c) per hour less than the standard rates.

(b) The Company may, at its option, assign rates less than the standard rates above mentioned to boys under twenty-one (21) years of age, who do not perform a man's work, but such rates shall not be more than five cents (5c) per hour less than the standard rates.

(c) Employees whose age or physical condition prevents them from performing regular production work may be assigned rates less than the standard rates above mentioned. Such rate in each individual case is to be agreed upon by the Company and the individual employee or the representatives of said Union, if the individual employee so desires, and the exception is to be used only to provide useful employment for persons who are unable to carry on regular

activity. Such rates shall not be more than five (5) cents per hour less than the standard rates.

Piece workers are guaranteed their minimum hourly rates on each specific piece-work job. Bonuses and premiums [fol. 62] earned upon any particular job shall be retained even though the standard is not earned upon a subsequent piece-work job during the payroll period.

2. Working Hours.—Effective July 1, 1937, the regular schedule of working hours shall be eight hours per day and forty hours per week for all production and maintenance employees. Time and one-half will be paid for all time in excess of eight hours in any one day or for all time in excess of forty hours in any one week, and double time shall be paid for work performed on Sundays and holidays. The work week shall run from Thursday to Wednesday. The Company, however, has not agreed to pay any overtime rates during the period in which perishable products are handled. The dates of the period will be announced by the Company and during it overtime rates will not be paid unless agreed to by the Company prior to the beginning of such period. The Union, however, has not agreed to any exemption for perishables.

The regular schedule of working hours for watchmen, firemen and engineers shall not be more than forty-two hours per week. Time and one-half will be paid for all time in excess of forty-two hours per week for the above employees, except for essential work of firemen and engineers during the period for handling perishables. The Union, however, has not agreed to such exceptions. Watchmen, firemen, engineers and others, whose regular schedule requires them to work on Sundays and holidays, shall receive no extra compensation for work performed on Sundays or holidays, unless such work shall require time in excess of forty-two hours per week, for which time they will be compensated at time and one-half.

Employees who are ordered to report for work by the Company and then find that no work is available, are to be paid for such time at their regular rate of pay and such hours are to be counted as part of their regular work week. In such event if less than two hours are consumed, the employee or employees shall, nevertheless, be paid a minimum of two hours' pay.

Full time will be paid for time lost due to an interruption

or cessation of work by reason of a breakdown of machinery, lack of products or for any other reason beyond the control of the employees, providing other employment cannot be found. Piece workers are guaranteed their minimum hoursly rates in the situations set forth above.

[fol. 63] 3. Vacations. Each employee who, prior to July 1, 1937, was on the payroll of the Company for one year or more and who worked at least 40 weeks during such year shall receive one week's vacation with pay; such vacation to be taken in a single period and at a time designated by the Company. All vacations are to be completed prior to December 31st of each year.

Those who are granted vacations will be paid on their average rate of earnings per hour, whether they be paid on an hourly or piece-work basis, for the two pay periods immediately preceding their vacation. The total hours of vacation pay will be forty (40) hours unless the individual employee's regular work week shall be more than forty (40) hours in which event the total hours of vacation pay shall be equal to the number of hours in such employee's regular work week.

4. Seniority. Rules governing seniority heretofore in effect shall continue.

5. Adjustment of Grievances. The Company recognizes and will deal with the representatives of the Canning & Pickle Workers' Local No. 325 as the exclusive collective bargaining agency for the employees of its Pittsburgh plant. Nothing herein shall apply to foremen, assistant foremen who are paid on a monthly basis, policemen, outside truck drivers, office employees or factory employees paid on a monthly basis. There shall be no general re-classification of employees without the consent of the Union.

Any matter which, in the opinion of any employee, requires adjustment and which such employee has been unable to adjust with his foreman, shall be settled, if the employee so desires, in the following manner:

First. Between the departmental member of the Grievance Committee or the departmental steward, designated by the Union, and the foreman of the department involved.

Second. Between a General Grievance Committee of not less than three nor more than five persons designated by the

Union, one of whom shall be the representative of the department involved, and the Superintendent of the plant.

Third. Between the representatives of the national organization of the Union and the representatives of the executives of the Company; and

Fourth. In the event the matter shall not have been satis- [fol. 64] factorily settled in the manner specified hereinabove, the matter shall then be appealed to an impartial umpire to be appointed by mutual agreement of the Company and the Union. The decision of the umpire shall be mutually binding. The expense and salary incident to the services of the umpire shall be paid jointly by the Company and the Union.

Regular meetings between the General Grievance Committee to be designated by the Union and the Superintendent of the plant, or his representative, shall be held upon the second Tuesday of each month at a time and place to be agreed upon by the Company and the Union. Matters involving discharges and similar matters that cannot be delayed until the next regular meeting between the General Grievance Committee and the plant Superintendent, may be taken up at any time.

Departmental members of the Grievance Committee or departmental stewards may obtain time off, without pay, for the transaction of legitimate business as departmental members of the Grievance Committee, by requesting and receiving permission for such time off from their departmental foremen.

Members of the General Grievance Committee may obtain time off, without pay, as may be required,

First. To attend regularly scheduled meetings of the General Grievance Committee, and

Second. To attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting.

Members of the General Grievance Committee shall have the right to visit departments other than their own at all reasonable times, for the purpose of transacting the legitimate business of the Grievance Committee, after requesting and receiving permission therefor from their respective department foremen or their designated representative.

6. Discharges. In the event an employee shall be discharged from his employment from and after the date hereof and he believes he has been unjustly dealt with, such discharge shall constitute a case arising under the method of adjusting grievances herein provided. In the event it should be decided that an injustice has been dealt the employee with regard to the discharge, the Company shall reinstate such employee and pay full compensation at the em- [fol. 65] ployee's regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five days from the date of discharge.

7. Safety and Health. The Company shall continue to make reasonable provisions for the safety and health of its employees at the plant during the hours of their employment. Protective devices and other equipment necessary to properly protect employees from injury shall be provided by the Company, in accordance with the practice now prevailing in each separate department. Proper heating and ventilating systems shall be installed where necessary.

8. The following days shall be considered holidays, during which days there shall be no work: July 4th, Memorial Day, Labor Day (subject to perishable exception), and objection as set forth above, Thanksgiving, Christmas and New Year's Day.

9. The wage rates and other matters hereinabove set forth shall remain in effect until further notice.

H. J. Heinz Company.

Where alleged inequalities in individual wage rates prevail, the matter may be taken up for local department adjustment and settlement made through the grievance procedure.

BOARD EXHIBIT No. 20

Case No. VI-C-81—Filed November 17, 1937

H. J. Heinz Company

July 15, 1937.

Notice To All Employees:

Following the recent election held under the supervision of the National Labor Relations Board, in which the Can-

ning and Pickle Workers' Local Union No. 325 was selected [fol. 66] as the collective bargaining agency for our employees, we have had meetings with a committee from that organization and after several weeks of negotiations, have agreed with them as follows:

1. Wages. Effective July 1, 1937, a ten per cent (10%) increase shall be made in all presently established rates for hourly, piece work, and bonus production. No increase in hourly rates, however, shall be less than five cents (5c) per hour.

Effective July 1, 1937, the standard minimum hourly rates for male employees shall be 60½c per hour and for female employees shall be 45c per hour. The foregoing rates are subject to the following exceptions:

(a) New employees for the first month of their employment may be assigned rates less than the standard rates above mentioned, but such rates shall not be more than five cents (5c) per hour less than the standard rates.

(b) The Company may, at its option, assign rates less than the standard rates above mentioned, to boys under twenty-one (21) years of age, who do not perform a man's work, but such rates shall not be more than five (5) cents per hour less than the standard rates.

(c) Employees whose age or physical condition prevents them from performing regular production work may be assigned rates less than the standard rates above mentioned. Such rate in each individual case is to be agreed upon by the Company and the individual employee or the representatives of said Union, if the individual employee so desires, and the exception is to be used only to provide useful employment for persons who are unable to carry on regular activity. Such rates shall not be more than five (5) cents per hour less than the standard rates.

Piece workers are guaranteed their minimum hourly rates on each specific piece-work job. Bonuses and premiums earned upon any particular job shall be retained even though the standard is not earned upon a subsequent piece-work job during the payroll period.

2. Working Hours. Effective July 1, 1937, the regular schedule of working hours shall be eight hours per day and forty hours per week for all production and mainten-

ance employees. Time and one-half will be paid for all time in excess of eight hours in any one day or for all time in excess of forty hours in any one week, and double time shall be paid for work performed on Sundays and [fol. 67] holidays. The work week shall run from Thursday to Wednesday. The Company, however, has not agreed to pay any overtime rates during the period in which perishable products are handled. The dates of the period will be announced by the Company and during it overtime rates will not be paid unless agreed to by the Company prior to the beginning of such period. The Union has not agreed to any exemption for perishables.

The regular schedule of working hours for watchmen, firemen and engineers shall not be more than forty-two hours per week. Time and one-half will be paid for all time in excess of forty-two hours per week for the above employees, except for essential work of firemen, and engineers in the period for handling perishables. The Union, however, has not agreed to this exception. Watchmen, firemen, engineers and others, whose regular schedule requires them to work on Sundays and holidays, shall receive no extra compensation for work performed on Sundays or holidays, unless such work shall require time in excess of forty-two hours per week, for which time they will be compensated at time and one-half.

Employees who are ordered to report for work by the Company and then find that no work is available, are to be paid for such time at their regular rate of pay and such hours are to be counted as part of their regular work week. In such event, if less than two hours are consumed, the employee or employees shall, nevertheless, be paid a minimum of two hours' pay.

Full time will be paid for time lost due to an interruption or cessation of work by reason of a breakdown of machinery, lack of products or for any other reason beyond the control of the employees, providing other employment cannot be found. Piece workers are guaranteed their minimum hourly rates in the situations set forth above.

3. Vacations. Each employee who, prior to July 1, 1937, was on the payroll of the Company for one year or more, and who worked at least forty weeks during such year, shall receive one week's vacation with pay; such vacation to be taken in a single period and at a time designated by the

Company. All vacations are to be completed prior to December 31st of each year.

Those who are granted vacations will be paid on their average rate of earnings per hour, whether they be paid on [fol. 68] an hourly or piecework basis, for the two pay periods immediately preceding their vacation. The total hours of vacation pay will be forty (40) hours unless the individual employee's regular work week shall be more than forty (40) hours, in which event the total hours of vacation pay shall be equal to the number of hours in such employee's regular work week.

4. Seniority. Rules governing seniority heretofore in effect shall continue.

5. Adjustment of Grievances. The Company recognizes and will deal with the representatives of the Canning and Pickle Workers' Local No. 325 as the exclusive collective bargaining agency for the employees of its Pittsburgh plant. Nothing herein shall apply to foremen, assistant foremen who are paid on a monthly basis, policemen, outside truck drivers, office employees, or factory employees paid on a monthly basis. There shall be no general re-classification of employees without the consent of the Union.

Any matter which, in the opinion of any employee, requires adjustment and which such employee has been unable to adjust with his foreman, shall be settled, if the employee so desires, in the following manner:

First. Between the Departmental member of the Grievance Committee or the departmental steward, designated by said Union, and the foreman of the department involved.

Second. Between a General Grievance Committee of not less than three nor more than five persons designated by said Union, one of whom shall be the representative of the department involved, and the Superintendent of the plant.

Third. Between the representatives of the national organization of said Union and the representatives of the executives of the Company; and

Fourth. In the event the matter shall not have been satisfactorily settled in the manner specified hereinabove, the matter shall then be appealed to an impartial umpire to be appointed by mutual agreement of the Company and said Union. The decision of the umpire shall be mutually bind-

ing. The expense and salary incident to the services of the umpire shall be paid jointly by the Company and said Union.

Regular meetings between the General Grievance Committee to be designated by the Union and the Superintend- [fol. 69] ent of the plant, or his representative, shall be held upon the second Tuesday of each month at a time and place to be agreed upon by the Company and the Union. Matters involving discharges and similar matters that cannot be delayed until the next regular meeting between the General Grievance Committee and the plant Superintendent, may be taken up at any time.

Departmental members of the Grievance Committee or departmental stewards may obtain time off, without pay, for the transaction of legitimate business as departmental members of the Grievance Committee, by requesting and receiving permission for such time off from their departmental foremen.

Members of the General Grievance Committee may obtain time off, without pay, as may be required,

First: To attend regularly scheduled meetings of the General Grievance Committee; and

Second: To attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting.

Members of the General Grievance Committee shall have the right to visit departments other than their own at all reasonable times, for the purpose of transacting the legitimate business of the Grievance Committee, after requesting and receiving permission therefor from their respective departmental foremen or their designated representatives.

6. Discharges. In the event an employee shall be discharged from his employment from and after the date hereof and he believes he has been unjustly dealt with, such discharge shall constitute a case arising under the method of adjusting grievances herein provided. In the event it should be decided that an injustice has been dealt the employee with regard to the discharge, the Company shall reinstate such employee and pay full compensation at the employee's regular rate for the time lost. All such

cases of discharge shall be taken up and disposed of within five days from the date of discharge.

7. Where alleged inequalities in individual wage rates prevail, the matter may be taken up for local department adjustment and settlement made through the grievance procedure.

8. Safety and Health. The Company shall continue to make reasonable provisions for the safety and health of its [fol. 70] employees at the plant during the hours of their employment. Protective devices and other equipment necessary to properly protect employees from injury shall be provided by the Company, in accordance with the practice now prevailing in each separate department. Proper heating and ventilating systems shall be installed where necessary.

9. The following days shall be considered holidays, during which days there shall be no work: July 4th, Memorial Day, Labor Day (subject to perishable exception and objection as set forth above), Thanksgiving, Christmas and New Year's Day.

10. The wage rates and other matters hereinabove set forth shall remain in effect until further notice.

H. J. Heinz Company.

BOARD EXHIBIT No. 21

Case No. VI-C-81—Filed November 17, 1937

Labor Relations Bulletin

Pittsburgh Factory, H. J. Heinz Company

According to the provisions of the National Labor Relations Act, we have bargained with the certified collective bargaining agency for our employees (not including, however, foremen, assistant foremen, who are paid on a monthly basis, policemen, outside truck drivers, office employees, or factory employees paid on a monthly basis) and the following understanding has been reached:

1. Wages. Effective July 1, 1937, a ten per cent (10%) increase shall be made in all rates theretofore established

for hourly, piecework and bonus production. No increase in hourly rates, however, shall be less than five cents (5c) [fol. 71] per hour.

Effective July 1, 1937, the standard minimum hourly rates for male employees shall be 60½c per hour and for female employees shall be 45c per hour. The foregoing rates are subject to the following exceptions:

(a) New employees for the first three months of their employment may be assigned rates less than the standard rates above mentioned, but such rates shall not be more than five cents (5c) per hour less than the standard rates.

(b) The Company may, at its option, assign rates less than the standard rates above mentioned to boys under twenty-one (21) years of age, who do not perform a man's work, but such rates shall not be more than five (5) cents per hour less than the standard rates.

(c) Employees whose age or physical condition prevents them from performing regular production work may be assigned rates less than the standard rates above mentioned. Such rates in each individual case is to be agreed upon by the Company and the individual employee, and the exception is to be used only to provide useful employment for persons who are unable to carry on regular activity. Such rates shall not be more than five (5) cents per hour less than the standard rates.

Piece workers are guaranteed their minimum hourly rates on each specific piecework job per payroll period. Bonuses and premiums earned upon any particular job shall be retained even though the standard is not earned upon a subsequent piecework job during the payroll period.

2. Working Hours. Effective July 1, 1937, the regular schedule of working hours shall be eight hours per day and forty hours per week for all production and maintenance employees. Time and one-half will be paid for all time in excess of eight hours in any one day, 4 hours on Saturday, or for all time in excess of forty-four hours in any one week. Both daily and weekly overtime will not be paid for the same hours so worked. The work week shall run from Thursday to Wednesday.

The regular schedule of working hours for watchmen, firemen and engineers shall not be more than forty-four

hours per week. Time and one-half will be paid for all time in excess of forty-four hours per week for such employees. Unless excepted by the provisions hereinafter set forth concerning the handling of perishable agricultural products, all regular production and maintenance employees [fol. 72] shall be paid time and one-half for work performed upon Sundays and the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas.

In the canning industry, the handling of perishables is necessary during the harvest season, and their delivery and consequent handling depend upon conditions beyond control. Unless otherwise agreed, no overtime rates of any kind will be paid to any employee for the performance of work essential to the handling of perishable agricultural products. This exemption from overtime rates is subject to any federal or state regulations which may become effective and nothing herein shall be considered as prejudicial to the right of either the Company or the bargaining agency to take any contrary position to that herein set forth in any hearing or other procedure upon state or federal legislation or regulations.

Employees who are ordered to report for work by the Company and find that no work is immediately available are to be paid for any such waiting time at their regular rate of pay and such time is to be counted as part of their regular work week. In the event an employee is instructed to report for work and is sent home because work is not available, he shall receive a minimum of two hours' pay.

Full time will be paid for waiting time, while the employee is at work, lost due to an interruption or cessation of work by reason of a breakdown of machinery, lack of products, or for any other reason beyond the control of the employees, provided other employment cannot be found.

Piece workers are guaranteed their minimum hourly rates in the situation set forth above when the waiting period exceeds fifteen minutes duration.

3. Vacations. Each employee upon completing a year of service, and who worked at least forty (40) weeks during such year, shall receive one week's vacation with pay, as soon thereafter as possible, such vacation to be taken in a single period and at a time designated by the Company.

Those who are granted vacations will be paid on their

average rate of earnings per hour, whether they be paid on an hourly or piece work basis, for the two pay periods immediately preceding their vacation. The total hours of vacation pay will be forty (40) hours unless the individual [fol. 73] employee's regular work week shall be more than forty (40) hours, in which event the total hours of vacation pay shall be equal to the number of hours in such employee's regular work week.

4. Seniority. Rules governing seniority heretofore in effect shall continue.

5. Adjustment of Grievances. It is expressly understood that any individual employee or group of employees shall have the right, at any time, to present grievances to the Company, and nothing herein shall in any way limit or restrict such right. In case of any disagreement, any employee or group of employees has the right to refer the matter to the Canning & Pickle Workers Local Union No. 325, in accordance with the grievance procedure now in effect between the Union and the Company.

The wage rates and other conditions hereinabove set forth shall remain in effect until further notice.

BOARD EXHIBIT No. 22

Case No. VI-C-81—Filed November 17, 1937

Labor Relations Bulletin

Pittsburgh Factory, H. J. Heinz Company

According to the provisions of the National Labor Relations Act, we have bargained with the certified collective bargaining agency for our employees (not including, however, foremen, assistant foremen, who are paid on a monthly basis, policemen, outside truck drvers, office employees, or factory employees paid on a monthly basis) and the following understanding has been reached:

1. Wages. Effective July 1, 1937, a ten per cent (10%) increase shall be made in all rates theretofore established [fol. 74] for hourly, piecework and bonus production. No

increase in hourly rates, however, shall be less than five cents (5c) per hour.

Effective July 1, 1937, the standard minimum hourly rates for male employees shall be 60½c per hour and for female employees shall be 45c per hour. The foregoing rates are subject to the following exceptions:

(a) New employees for the first three months of their employment may be assigned rates less than the standard rates above mentioned, but such rates shall not be more than five cents (5c) per hour less than the standard rates.

(b) The Company may, at its option, assign rates less than the standard rates above mentioned to boys under twenty-one (21) years of age, who do not perform a man's work, but such rates shall not be more than five (5) cents per hour less than the standard rates.

(c) Employees whose age or physical condition prevents them from performing regular production work may be assigned rates less than the standard rates above mentioned. Such rates in each individual case are to be agreed upon by the Company and the individual employee, and the exception is to be used only to provide useful employment for persons who are unable to carry on regular activity. Such rates shall not be more than five (5) cents per hour less than the standard rates.

Piece workers are guaranteed their minimum hourly rates on each specific piecework job per payroll period. Bonuses and premiums earned upon any particular job shall be retained even though the standard is not earned upon a subsequent piecework job during the payroll period.

2. Working Hours. Effective July 1, 1937, the regular schedule of working hours shall be eight hours per day and forty hours per week for all production and maintenance employees. Time and one-half will be paid for all time in excess of eight hours in any one day and for all time in excess of forty hours in any one week. Both daily and weekly overtime shall not be paid for the same hours so worked. The work week shall run from Thursday to Wednesday.

The regular schedule of working hours for watchmen, firemen and engineers shall be forty-two hours per week. Time and one-half will be paid for all time in excess of

forty-two hours per week for such employees. Unless ex-
[fol. 75] cepted by the provisions hereinafter set forth concerning the handling of perishable agricultural products, all regular production and maintenance employees shall be paid time and one-half for work performed upon Sundays and the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas.

In the canning industry, the handling of perishables is necessary during the harvest season, and their delivery and consequent handling depend upon conditions beyond control. Unless otherwise agreed, no overtime rates of any kind will be paid to any employee for the performance of work essential to the handling of perishable agricultural products. This exemption from overtime rates is subject to any federal or state regulations which may become effective and nothing herein shall be considered as prejudicial to the right of either the Company or the bargaining agency to take any contrary position to that herein set forth in any hearing or other procedure upon state or federal legislation or regulations.

Employees who are ordered to report for work by the Company and find that no work is immediately available are to be paid for any such waiting time at their regular rate of pay and such time is to be counted as part of their regular work week. In the event an employee is instructed to report for work and is sent home because work is not available, he shall receive a minimum of two hours' pay.

Full time will be paid for waiting time, while the employee is at work, lost due to an interruption or cessation of work by reason of a breakdown of machinery, lack of products, or for any other reason beyond the control of the employees, provided other employment cannot be found.

Piece workers are guaranteed their minimum hourly rates in the situation set forth above when the waiting period exceeds fifteen minutes' duration.

3. Vacations. Each employee upon completing a year of service, and who worked at least forty (40) weeks during such year, shall receive one week's vacation with pay, as soon thereafter as possible, such vacation to be taken in a single period and at a time designated by the Company.

Those who are granted vacations will be paid on their average rate of earnings per hour, whether they be paid on

[fol. 76] an hourly or piece work basis, for the two pay periods, immediately preceding their vacation. The total hours of vacation pay will be forty (40) hours unless the individual employee's regular work week shall be more than forty (40) hours, in which event the total hours of vacation pay shall be equal to the number of hours in such employee's regular work week.

4. Seniority. Rules governing seniority heretofore in effect shall continue.

5. Adjustment of Grievances. It is expressly understood that any individual employee or group of employees shall have the right, at any time, to present grievances to the Company, and nothing herein shall in any way limit or restrict such right. In case of any disagreement, any employee or group of employees has the right to refer the matter to the Canning and Pickle Workers Local Union Number 325, in accordance with the grievance procedure now in effect between the Union and the Company.

The wage rates and other conditions hereinabove set forth shall remain in effect until further notice.

[fol. 77] BOARD EXHIBIT No. 23

Case No. VI-C-81—Filed November 17, 1937

Amalgamated Meat Cutters and Butcher Workmen of North America

Affiliated With A. F. of L.

Local Union No. 325

August 17, 1937.

Mr. H. E. Riley, % H. J. Heinz Company, N. S., Pittsburgh, Pennsylvania.

Attention of Mr. H. E. Riley

DEAR SIR:

This is to advise you that the notice you have posted on your bill-board does not in our opinion constitute an agreement within the intent of the memorandum of understanding entered into by and between our Union and you on June

4, 1937, nor is it evidence of bona-fide collective bargaining within the meaning of that understanding or the National Labor Relations Act.

Nevertheless, we realize that the concessions gained for the employees of the H. J. Heinz Company were the direct results of our efforts and we are anxious to conserve for the Heinz employees the benefits which they so richly deserve and for which we strove so hard.

We, therefore, do not object to you posting of the notice but intend to lay this matter before the National Labor Relations Board in order to have that impartial agency determine whether or not you have bargained in good faith and whether you have done what our memorandum of understanding of the 4th of June, 1937, and the law requires of you.

Yours very truly, Canning & Pickle Workers Union, No. 325, by Anthony Tasker, Business Agent.

[fol. 78] BOARD EXHIBIT No. 33

Case No. VI-C-81—Filed November 24, 1937

Constitution and By-Laws of the Heinz Employees Association, Pittsburgh, Pennsylvania

Constitution

Article I

Name

1. This organization shall be known as the Heinz Employees Association.

Purposes

2. This organization is formed for the following purposes:

(a) To represent the employees of the H. J. Heinz Company of Pittsburgh, Pennsylvania, in collective bargaining with the management of said company relative to grievances, wages, hours of labor, health and safety conditions and other matters relating to the general welfare of the said employees.

(b) To promote social, literary, educational and athletic activities among said employees.

(c) To provide a purchasing agency whereby the members hereof may receive the benefit of group purchasing power.

Address

3. The address of this organization shall be Heinz Employees Association, Pittsburgh, Pennsylvania.

Affiliations

4. This organization shall not become affiliated with any other organization or association of any kind, except by a majority vote of all the members of the association.

Article II

Membership

1. All employees of the Pittsburgh Plant of the H. J. Heinz Company shall be eligible to membership in this [fol. 79] association, except office employees, foremen, department heads, or those employed in a supervisory capacity with authority to hire and discharge. No member shall be eligible to vote at any election until he has been a member of this association for at least ninety (90) days prior to the date of election.

By-Laws

Article II

Committees

2. There shall be the following standing Committees:

1. Collective Bargaining Committee.
2. Auditing Committee.
3. Membership Committee.

3. Collective Bargaining Committee: This Committee shall consist of five (5) Representatives and the Association Attorney, whose duty it shall be to meet with the executives of the H. J. Heinz Company, or their representatives, just as soon as the organization of the Association is complete and thereafter as the occasion may arise, for the purpose of negotiating an agreement with the company on

behalf of the members of this association, relative to wages, hours and working conditions. Any agreement so obtained by this Committee shall be submitted to the Board of Representatives for approval and when so approved shall be binding upon all the members of this association. This Committee shall also confer with the company representatives as to all grievances referred to it by the Board of Representatives in accordance with these By-Laws.

Article III

Complaint Procedure

.1. Any employee or group of employees who are members of this association, having a grievance relating to wages, hours, working conditions, or any other matter may attempt to adjust such grievance directly with his or their foreman or supervisor, and if no satisfactory adjustment [fol. 80] is made, the same may be referred to the Representative of the proper division who shall attempt to adjust such grievance with the proper foreman or supervisor, and if no satisfactory adjustment is then made, said Representative shall refer the matter to the Board of Representatives of this association who shall if they deem it a proper, just and reasonable grievance, present it through the Collective Bargaining Committee, to the Management of the H. J. Heinz Company for adjustment or determination under rules of procedure to be established by agreement with the management, provided, however, that any employee or group of employees, who are members of this association, may present a grievance personally and directly to the Board of Representatives, rather than through the Division Representative, at any regular meeting of the Board or at any special meeting called for such purposes. The members of this Association shall be entitled to know the status of any grievance submitted to the Board of Representatives.

[fol. 81] BOARD EXHIBIT No. 34

Case No. VI-C-81—Filed November 24, 1937

I am an employee of H. J. Heinz Company. I have read the agreement entered into between the company and the bargaining committee of the Heinz Employees Association.

I am satisfied with it and am ready and willing to go to work immediately.

Please return This Card to headquarters immediately,

1000 East Ohio Street.—FAirfax 4591

VERY IMPORTANT

....

Department Signature

....

Date Address

BOARD EXHIBIT No. 35

Case No. VI-C-81—Filed November 24, 1937

I hereby apply for membership in the Heinz Employees Association formed for the purpose of carrying on collective bargaining with the management of H. J. Heinz Company. It is understood that the representatives of the organization shall be employees of H. J. Heinz Company. The organization is not to be affiliated with any other organization and is to be entirely independent of the management.

[fol. 82] RESPONDENT'S EXHIBIT No. 1

Case No. VI-C-81—Filed November 18, 1937

The Union Press Gives Space to Heinz Local 325

As an aid to the movement to make Pittsburgh a 100% union city, The Union Press opens its columns to Local 325 of the Canning and Pickling Workers Union, A. F. of L. In the past few months this union has carried on a very heroic struggle to unionize the H. J. Heinz plant. In many ways the organization drive there parallels our own here at Jones and Laughlin. First a strike and then a plant election are some of the similar steps that Local 325 has taken. We welcome them and promise them any support we can give.

To All Non-Union Men and Women of The H. J. Heinz Company.

Local No. 325 of the Canning & Pickling Workers Union won the election for bargaining rights at the Heinz Company. After the election there was a lay off in the ranks of our Union members which the Grievance Committee handled easily and the members were satisfied. That alone was proof enough that you should have the Union or belong to the Union.

We know that the strike left many of the members hard hit, but this is no reason why they shouldn't have joined up by now. The Union has had more than enough patience with these people who flatly refuse to join or have anything to do with it.

We have meetings on the first and third Fridays of each month and anything that the members do not understand is gladly explained at these meetings, so there is no excuse for them not understanding certain facts about the Union.

There is only one way to solve the problem of which Union should be in the H. J. Heinz Company plant. That is Local Union No. 325, which will be the only Union in the plant.

We are letting you know before time that every Non-Union member in the plant will have a limited time to join Local No. 325 and if they do not join we will not be responsible for anything that occurs in front of the H. J. Heinz Company one of these days.

This is not a threat, but as we have explained above, it [fol. 83] is your own fault that you brought this on yourself. So, leave your personal feeling at home. Be Wise and Organize.

Anthony Tasker, Business Representative No. 325.

RESPONDENT'S EXHIBIT No. 2

Case No. VI-C-81—Filed November 18, 1937

From Pittsburgh Catholic, July 8, 1937

Catholic Radical Alliance

Strike Settled

The Loose-Wiles Biscuit Co. strike and the Heinz negotiations were both ended this week. The Catholic Radical

Alliance was interested in both controversies, and one of its representatives had taken part in the conferences held.

The Loose-Wiles strike had continued for six weeks and was settled on Tuesday. A substantial wage increase was given to all workers and in the matter of piece work and the speed up satisfactory agreements were reached. No contract was signed, but a memorandum was drawn up and signed by the mediators.

The union involved is the pioneer CIO Bakers Union Local 118. The company agreed to recognize it as sole bargaining agent for its members, the truck drivers who belong to the A. F. of L. not being involved. Thomas M. Reichart, U. S. labor department mediator, announced that minimums for men and women will be 50 and 42½¢ respectively. A tremendous concession is the agreement to abolish piece work pay rates Sept. 1.

The outcome of the Heinz negotiations was not so for- [fol. 84] tunate. An impasse was reached early in the negotiations when the company refused to go beyond its offer of a 10% raise. This substantial increase was not acceptable to the union because it already had been granted to the company union when the strike was in progress. It was the contention of the union that this was really not a raise since it already had been granted; the company insisted that it was a raise. The Alliance representative at the conference sided with the men. Union officials in view of statements made during the strike by the company union took the position that acceptance of this offer might cause the legitimate union to lose face.

However, last week the union officials took the offer to the men in a mass meeting. The workers, wanting peace, agreed to accept the terms, but for no definite period and they refused to sign a contract with the company. Certain adjustments were made in the matter of wages and overtime.

The Heinz Labor controversy was the first one in which the Catholic Radical Alliance was a major factor. Officials of the union and partisans of the company agree that the intervention of the Alliance on the part of the workers turned the tide, bolstered the workers' morale and enabled the legitimate union to win the election. The union in the Heinz plant is A. F. of L. Canning and Pickle Workers Union, Local 325.

In the Loose-Wiles strike the Alliance was also a major factor. On recommendation of the Alliance, Rev. Thomas B. Lappan, director of the Society of St. Vincent de Paul, had the society aid upwards of thirty families of strikers whose low wages and many children had not enabled them to save. Advice, encouragement by the Alliance is said to have helped keep the strikers together over the six weeks grind.

On the invitation of Jack Schulter, CIO organizer, a representative of the Alliance addressed a mass meeting of the United Electrical and Radio Workers of America in Labors non-Partisan League Headquarters yesterday. The Alliance is lending its support to the drive being made by that organization to enroll local utility workers.

[fol. 85] RESPONDENT'S EXHIBIT No. 3

Case No. VI-C-81—Filer November 22, 1937

H. J. Heinz Company—Pittsburgh Plant

June 21, 1937.

To All Foremen & Foreladies:

We have had two meetings recently, entirely devoted to the subject of your relationship with the employees under your direction, and have tried to make it very clear to you that you must give considerable thought to your relationship with these employees.

Every employee must be treated the same as any other employee, and while we have always operated on this principle, special stress must be laid on this point at this time, due to the recent disturbance in our industrial relationship, which has resulted in two groups of our employees becoming antagonistic to each other. This results in a strained relationship, not only between these two groups of employees, but between each of them and the Management, and unless you recognize this changed condition and conduct yourself so that no one feels that they are being slighted or in any way imposed upon, we are fearful that the present unsatisfactory condition will persist.

On the other hand, if you do have a sympathetic understanding of the condition and handle it in the right manner,

you can do much to bring the people together in happy relationship one with the other and also the Management. Only by being honestly impartial and disinterested can you hope to bring this about, and we again urge you to direct your efforts to this end.

This is especially true in the case of transfers or temporary layoffs where the person involved naturally is apt to feel that some discrimination is being used in their case, and you must be careful to explain to them just what you are doing and why you are doing it, so that they do not take offense but realize that the action is taken because the operation of the business demands it and not because someone does not like them or their actions.

These statements apply to relationship with all our employees, as it is our aim and should be yours to see that every employee gets a square deal regardless of which group he has affiliated himself with.

Complaints have reached us from the members of the two groups in our factory about occurrences which we feel [fol. 86] should not give rise to complaint if the person involved had understood why certain things were done.

The National Labor Relations Board called our attention on Saturday — two more complaints that, while they were rather trivial, did indicate just how careful you must be in talking to the employees, no matter how friendly you may feel toward them. The complaints had to do with statements made to our employees by two foremen, which statements were resented by the employees to the extent that they reported them to the Labor Board. Investigation indicates that both statements were made in a kidding manner without the foremen being aware that any resentment would be taken to the conversation, but it indicates clearly that all kidding and joking with employees under your direction must stop, as they seem to get upset now at things you say to them that ordinarily in the past would have been laughed at.

We must insist that you do not talk to employees, except about their work, and you must treat them all just as fairly as it is humanly possible to do.

Nothing we have said in the above should be taken to mean that discipline should be disregarded. Employees should be required to make an honest effort to discharge their duties, and it is still your function as foremen to

properly instruct and guide their activities, but you must do this in a manner that will not be misunderstood or give rise to any suspicion that you are playing favorites among the group of employees under your supervision.

Howard G. Heinrich, Superintendent.

[fol. 87] RESPONDENT'S EXHIBIT No. 4

Case No. VI-C-81—Filed November 23, 1937

I understand that yesterday the petition most of you signed expressing willingness to join the Heinz Employees Association was stolen. This I consider to have been an act in direct opposition to the wishes of you people as expressed by your signatures. I just want to take this opportunity to tell you that whatever your wishes are they will be protected, whether you want to join the Heinz Association or the A. F. of L. which none of the men are interested in. No law has ever been passed giving anyone the right to steal, to threaten either bodily, or property violence or threaten loss of a job. I will personally do all I can to protect each one of you, and assure you of your right to express your wishes in a peaceful way. These are rights we all have as citizens of U. S. A.

In the last few days you have all heard rumors of all kinds. I have heard a few also. You all know that rumors of any kind are not reliable, and often are in direct contradiction to the truth.

Now I want to tell you a few things that are true. Understand I am speaking now only as an individual and not as a representative of H. J. Heinz Co.

Among other rumors I have heard it said that if the Employees Association gains a majority of members that wages will be cut. Now that is not true. You all know that with the return of good times wages have been raised, this over the past two years. Now your wages and mine depend largely on how profitable the business is. If times continue good, I have no doubt that wages will continue to advance.

Other rumors and threats have been circulated in attempts to intimidate you and coerce you into doing something your better judgment does not sanction. Many of these are deliberate lies told deliberately to influence you. All I have to say is weigh in your own minds whatever you

hear. Pick out the truth and cling to it, believe in it and be willing to defend it.

Getting back now to the paper which was stolen. I think it only fair that you should all be again given the opportunity to show that you want to join the Association of Heinz Employees. Marie Ball is here with the paper and [fol. 88] all of you who signed before may now sign again in perfect confidence that you will be protected in your right to express your opinions as you see fit.

Any of you who did not sign may also sign at this time if you wish. Also if there are any who wish to join the Butchers Union in the A. F. of L. or any other union, I want to assure you that I offer the same personal protection to them. You all have a right to do as you see fit in joining any organization.

If there are any who want to join the A. F. of L. I am sure there are men here who will take care of them and see that they get signed up. Those who want to back up the Heinz Employees Association as they did yesterday can step up to the desk and sign the paper.

R. W. Locke.

4/30/37—12:50 p. m.

[fol. 89] RESPONDENT'S EXHIBIT No. 5

Case No. VI-C-81—Filed November 24, 1937

Official Organ of Canning & Pickle Workers Union, October, 1937

Dance

and Entertainment

Benefit H. J. Heinz Strikers

Bohemian Hall

1000 Vinial Street, North Side

Tuesday, June 1st, 8 P. M.

Music by Popular Swing Orchestra

Admission 25c

Auspices: Canning and Pickle Workers Local 325

(Over)

6—73

Solidarity Forever

(Tune: Battle Hymn of the Republic)

(1)

The workers learned their lesson now
As everyone can see.
The workers know the bosses are
Their greatest enemy.
We'll fight and fight until we win
Our final victory.
For One Big Solid Union

Chorus

Solidarity forever!
Solidarity forever!
Solidarity forever!
For the Union makes us strong!

(Over)

[fol. 90] RESPONDENT'S EXHIBIT No. 6

Case No. VI-C-81—Filed November 24, 1937

Official Organ of Canning & Pickle Workers Union,
October, 1937

Heinz Grievance Committee Acts on 25 Cases

This committee handled twenty-five cases so far. Nineteen, concerning general complaints throughout the factory have been settled to the satisfaction of the employee and the grievance committee.

Three cases concerning wages have not been settled as due to circumstances surrounding the cases.

There were three instances where persons broke rules which resulted in their dismissal. These three men were reinstated at the insistance of the Union.

The committee would like anyone who has a complaint to take it to the steward of his or her department who will then represent you in dealing with your foreman. If you are not satisfied, come up to the grievance committee who will then deal with the Company's representative.

We also want our members to feel that at any time they make a complaint it may not only satisfy themselves but may alter conditions which have been overlooked in the past. All we ask of a person making a complaint is to have all the facts and names of persons concerned as it helps us to arrive at an early adjustment.

Members of the grievance committee will be present at all regular meetings to answer any questions or complaints that you may have. So attend each meeting and show the Company that good Union members can cooperate 100%.

Agreement Between H. J. Heinz Company and Local Union 325 Explained in Brief

After nine weeks of negotiating between the H. J. Heinz Company and the Canning and Pickle Workers Union, Local 325, an agreement was finally reached and posted on the bulletin boards in the Pittsburgh plant on August 13, 1937.

This agreement, printed elsewhere in the paper is not entirely satisfactory to the Union but is a step in the right direction. The Union wanted a signed contract, but while [fol. 91] negotiations were in progress the large steel companies of Ohio and Pennsylvania refused to sign any contract with their unions and the Heinz Company, taking their cue from them also stubbornly refused to affix their signature to the agreement. However it is posted prominently on all bulletin boards and this indicates a spirit of co-operation which, we hope, will be as binding as if — were signed by both parties.

The most important clause is the one dealing with wages. This provides a 10% increase for all workers so that the minimum wage is $.60½ for men and $.45 for women, with two exceptions. These exceptions are for boys under 21 years of age who do not perform men's work and for those who are too old or not capable to work at a regular job and are given a "pension" job rather than be laid off permanently. These two clauses have caused some trouble but the grievance committee has taken care of those cases brought before them.

In the section dealing with working hours, the work week is scheduled from Thursday to Wednesday. This is some new wrinkle thought up by the Manufacturers Association so as to avoid the paying of overtime should it be necessary

to work on Saturday. Starting the week on Thursday rather complicates things in general and has caused much dissatisfaction and criticism.

The section dealing with perishables is subject to the new state law which went into effect on September 1, 1937 for women and will be enforced for men on Dec. 1, 1937. This law will be explained in full detail in a later issue.

Time and one-half will be paid for all Sundays and holidays as noted, except for the few men whose regular work day is Sunday, such as engineers, etc.

The seniority clause stating that it shall remain the same as in force as in the past has caused some trouble as the superintendent had been the sole judge as to whom was to be laid off.

The officers of the Union and grievance committee are now working on a plan that will be as simple and just as possible. The Company is cooperating in this and we believe it will be settled in a few days.

Official Organ of Canning & Pickle Workers Union,
October, 1937

Agreement Between H. J. Heinz Company and Local 325

According to the provisions of the National Labor Rela- [fol. 92] tions Act, we have bargained with the certified collective bargaining agency for our employees (not including, however, foremen, assistant foremen, who are paid on a monthly basis, policemen, outside truck drivers, office employees, of factory employees paid on a monthly basis) and the following understanding has been reached:

1. Wages. Effective July 1, 1937, a ten per cent (10%) increase shall be made in all rates theretofore established for hourly, piece work and bonus production. No increase in hourly rates, however, shall be less than five cents per hour.

Effective July 1, 1937, the standard minimum hourly rates for male employes shall be 60½c per hour and for female employees 45c per hour. The foregoing rates are subject to the following exceptions:

(a) New employees for the first three months of their employment may be assigned rates less than the standard rates above mentioned, but such rates shall not be more than five cents (5c) less than the standard rates.

(b) The Company may, at its option, assign rates less than the standard rates above mentioned to boys under twenty-one (21) years of age, who do not perform a man's work, but such rates shall not be more than five cents (5c) an hour less than the standard rates.

(c) Employees whose age or physical condition prevents them from performing regular production work may be assigned rates less than the standard rates above mentioned. Such rates in each individual case are to be agreed upon by the Company and the individual employee, and the exception is to be used only to provide useful employment for persons who are unable to carry on regular activity. Such rates shall not be more than five cents (5c) per hour less than the standard rates.

Piece-workers are guaranteed their minimum hourly rates each specific piecework job per payroll period. Bonuses and premiums earned upon any particular job shall be retained even though the standard rate is not earned upon a subsequent piecework job during the payroll period.

2. Working Hours: Effective July 1, 1937, the regular [fol. 93] schedule of working hours shall be eight hours per day and forty hours per week for all production and maintenance employees. Time and one-half will be paid for all time in excess of eight hours in any one day and for all time in excess of forty hours in one week. Both daily and weekly overtime shall not be paid for the same hours so worked. The work week shall run from Thursday to Wednesday.

The regular schedule of working hours for watchmen shall be forty-two hours per week and for firemen and engineers forty-four hours per week. Time and one-half will be paid for all time in excess of those hours for such employees. Unless excepted by the provisions hereinafter set forth concerning the handling of perishable agricultural products, all regular production and maintenance employees shall be paid time and one-half for work performed upon Sundays and the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas.

In the canning industry, the handling of perishables is necessary during the harvest season, and their delivery and consequent handling depend upon conditions beyond our control. Unless otherwise agreed, no overtime rates of any

kind will be paid to any employees for the performance of work essential to the handling of perishable agricultural products. This exemption from overtime rates is subject to any federal or state regulations which may become effective and nothing herein shall be considered as prejudicial to the right of either the Company or the bargaining agency to take any contrary position to that herein set forth in any hearing or other procedure upon state or federal legislation or regulations.

Employees who are ordered to report for work by the Company and find that no work is immediately available are to be paid for any such waiting time at their regular rate of pay and such time is to be counted as part of their regular work week. In the event an employee is instructed to report for work and is sent home because work is not available, he shall receive a minimum of two hours' pay.

Full time will be paid for waiting time, while the employee is at work, lost due to an interruption or cessation of work by reason of a breakdown of machinery, lack of products, or for any other reason beyond the control of the employees, [fol. 94] provided other employment cannot be found.

Pieceworkers are guaranteed their minimum hourly rates in the situation set forth above when the waiting period exceeds fifteen minutes.

3. Vacations: Each employee upon completing a year of service, and who worked at least forty (40) weeks during such year, shall receive one week's vacation with pay, as soon thereafter as possible, such vacations to be taken in a single period and at a time designated by the Company.

Those who are granted vacations will be paid on their average rate of earnings per hour, whether they be paid on an hourly or piecework basis, for the two pay periods immediately preceding their vaction. The total hours of vacation pay will be forty (40) hours unless the individual employee's regular work shall be more than forty (40) hours, in which event the total hours of vacation pay shall be equal to the number of hours in such employee's regular work week.

4. Seniority: Rules governing seniority heretofore in effect shall continue.

5. Adjustment of Grievances: It is expressly understood that any individual employee or group of employees shall

have the right, at any time, to present grievances to the Company, and nothing herein shall in any way limit or restrict such right. In case of any disagreement, any employee or group of employees has the right to refer the matter to the Canning and Pickle Workers Local Union, Number 325 in accordance with the grievance procedure now in effect between the Union and the Company.

The wage rates and other conditions herein above set forth shall remain in effect until further notice. August 13, 1937.

[fol. 95] RESPONDENT'S EXHIBIT No. 7

Case No. VI-C-81—Filer November 24, 1937

Attention!

Membership Meeting

All No. 325 Members at Bohemian Hall, 1000 Venial St.

Friday, Aug. 20, 1937, 8:00 P. M.

Notice Regular Meetings

Every 1st and 3rd Friday of the Month

There will be discussions on the contract that is now posted on your Bulletin Board. Come to this meeting for it is very important and for your benefit.

Canning & Pickle Workers Union, Local No. 325, 922 East Ohio St., North Side Pgh., Penna.

[fol. 96] BEFORE NATIONAL LABOR RELATIONS BOARD

Present: J. Warren Madden, Chairman; Edwin S. Smith.

Case No. C-304

In the Matter of H. J. HEINZ COMPANY, and Canning and Pickle Workers' Organization No. 325, Affiliated With Amalgamated Meat Cutters and Butcher Workmen of North America, A. F. of L.

ORDER TRANSFERRING PROCEEDING TO NATIONAL LABOR RELATIONS BOARD—December 1, 1937

A hearing having been duly held in this proceeding before a Trial Examiner duly appointed, and the Board deeming it necessary, in order to effectuate the purposes of the

National Labor Relations Act, that the proceeding be transferred to and continued before it,

It is Hereby Ordered in accordance with Section 37 of Article II of National Labor Relations Board Rules and Regulations—Series 1, as amended, that this proceeding be transferred to and continued before the Board.

By direction of the Board:

Nathan Witt, Secretary. (Seal.)

[fol. 97] BEFORE NATIONAL LABOR RELATIONS BOARD

Case No. C-304

In the Matter of H. J. HEINZ COMPANY, and Canning and Pickle Workers, Local Union No. 325, Affiliated With Amalgamated Meat Cutters and Butcher Workmen of North America, American Federation of Labor

Mr. Robert H. Kleeb, for the Board.

Thorp, Bostwick, Reed & Armstrong, by Mr. Earl F. Reed, Mr. Donald W. Ebbert, and Mr. R. G. Bostwick, of Pittsburgh, Pa., for the respondent.

Mary Lemon Schleifer, of counsel to the Board.

Decision and Order

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Canning and Pickle Workers, Local Union No. 325, herein called the Union, the National Labor Relations Board, herein called the Board, by Charles T. Douds, Regional Director for the Sixth Region (Pittsburgh, Pennsylvania), issued its complaint, dated October 26, 1937, against H. J. Heinz Company, Pittsburgh, Pennsylvania, herein called the respondent. The complaint alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Sections 8 (1), (2), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint alleged, in substance, that the respondent had dominated and interfered at the Pittsburgh plant with the formation and administration of a labor organization known as the Heinz

Employees' Association, herein called the Association, and had contributed financial and other support to it; had refused to bargain collectively in good faith with the Union [fol. 98] which had been selected as collective bargaining agent by a majority of the employees in an appropriate unit at the Pittsburgh plant; and by these and other acts had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in section 7 of the Act. Copies of the complaint and accompanying notice of hearing were duly served upon the respondent, the Union, and the Association.

On November 6, 1937, the respondent filed an answer to the complaint, in which the respondent denied that it had engaged in or was engaging in any unfair labor practices affecting commerce within the meaning of the Act, and prayed that the complaint be dismissed.

Pursuant to notice, a hearing was held in Pittsburgh, Pennsylvania, on November 15, 16, 17, 18, 22, 23, 24, and 26, 1937, before J. Raymond Walsh, the Trial Examiner duly designated by the Board. The respondent and the Board were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

The respondent's motion to dismiss set forth in the answer was not renewed at the hearing and no ruling has been made upon it. The motion is hereby denied. At the beginning of the hearing, counsel for the Board moved to amend the name of the Union, designated in the pleading as Canning and Pickle Workers' Orzanization No. 325, to Canning and Pickle Workers, Local Union No. 325. The record does not indicate that any ruling was made on the motion. The motion is hereby allowed. Numerous motions and objections to the introduction of evidence were made during the course of the hearing by counsel for the respondent and counsel for the Board. The Board has reviewed the rulings of the Trial Examiner on motions and objections and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On December 1, 1937, the Board, acting pursuant to Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the proceeding transferred to and continued before the Board.

Upon the entire record in the case, the Board makes the following:

[fol. 99] FINDINGS OF FACT

I. The business of the respondent

H. J. Heinz Company, a Pennsylvania corporation, is engaged in the production, sale, and distribution of food products. The principal offices and main plant of the respondent are in Pittsburgh, Pennsylvania. Branch plants of the respondent are located in Ashbridge, Chambersburg, and Sharpsburg, Pennsylvania; Princeton, Indiana; Muscatine, Iowa; Henderson, Kentucky; Holland, Michigan; Salem, New Jersey; Madina, New York; Bowling Green and Fremont, Ohio; Winchester, Virginia; and Leamington, Ontario, Canada. In addition, the respondent maintains 89 stations for receiving food products located at various points in Colorado, Indiana, Michigan, Wisconsin, and Canada. Fifty-three salting stations, where in addition to receiving food products some initial treatment of the products takes place, are maintained by the respondent at various places in Colorado, Indiana, Michigan, Wisconsin, and Canada. The respondent has sales offices in 45 principal cities of the United States and 5 cities in Canada. The respondent is the parent of five subsidiary corporations, one of which is an English and another a Spanish corporation.

Approximately 76 per cent of the total value of raw materials used in the Pittsburgh plant of the respondent originate outside the State of Pennsylvania and approximately 78 per cent of the products of the Pittsburgh plant are shipped outside the State of Pennsylvania.

II. The labor organizations involved

Canning and Pickle Workers, Local Union No. 325, is a labor organization, chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, affiliated with the American Federation of Labor. Although the record is not clear, membership in the Union is apparently limited to employees of the respondent engaged in production and maintenance, exclusive of supervisory, managerial, and clerical employees.

Heinz Employees' Association is a labor organization, not affiliated with any other labor organization. It admits to

membership employees in the Pittsburgh plant of the respondent, except office employees, foremen, department heads, or those employed in a supervisory capacity with authority to hire and discharge.

[fol. 100] III. The unfair labor practices

A. Background of the unfair labor practices

In January 1937, a group of employees in the respondent's Pittsburgh plant requested the Amalgamated Meat Cutters & Butcher Workmen of North America, herein called the Amalgamated, to aid them in forming an organization within the plant. No organization existed among these employees prior to this time. Conferences and secret meetings were held by the interested employees until April 1937, when an open drive for organization began and public meetings were held. On May 11, 1937, the Amalgamated granted a charter to the Union.

During April and May, 1937, coincident with the open drive for membership by the Union, an organization known as Heinz Employees' Association also began a drive for members. Bitter rivalry existed between the two factions in the plant.

On May 21, 1937, Frank Kracik, international representative of the Amalgamated, met with H. N. Riley, a director of the respondent in charge of manufacturing. Kracik gave Riley a copy of a contract proposed by the Union and asked for a further meeting for the purpose of negotiating a contract. Riley agreed to meet with the representatives of the Union for this purpose on May 24, 1937.

On the morning of May 24, representatives of the Association called Riley and also asked for an appointment to negotiate a contract. Riley met both groups during that day.

At the meeting with the Union, which was the first of the two meetings, Riley demanded proof of the Union's claim that a majority of the employees at the Pittsburgh plant had chosen the Union to represent them and that it was entitled, therefore, to act as the sole collective bargaining agent. No method of determining this fact was decided upon since the Union was unwilling to reveal the identity of its members. The meeting adjourned upon Riley's ac-

ceding to the Union's request that it be given 24 hours to show the extent of its membership.

At the meeting with the Association Riley likewise demanded proof from the Association to substantiate its claim that the Association had been selected collective bargaining agent by a majority of the employees at the Pittsburgh plant. The Association offered to show the respondent petitions authorizing the Association to act as collective [fol. 101] bargaining agent which, it alleged, had been signed by a majority of the employees at the Pittsburgh plant. Riley refused to examine the petitions, stating that he did not wish to know which employees had joined either group. Riley informed the Association's representatives that the Union likewise claimed to have been selected as collective bargaining agent by a majority of the employees and suggested the advisability of a secret election, a method which had been discussed with the representatives of the Union. The meeting adjourned without any decision being made upon how the conflicting claims of the two organizations should be resolved.

On the same night, apparently dissatisfied with the prospective delay in recognition, the Union voted to strike; the strike being put into effect immediately. During the following 4 days the Mayor of the City of Pittsburgh attempted to settle the strike by securing the consent of the respondent and the two organizations to an election. The Union, claiming that the respondent had dominated and interfered in the formation and administration of the Association contrary to the provisions of the Act, was unwilling to consent to an election if the name of the Association was put on the ballot. The Union indicated its willingness to have an election in which the employees would choose whether or not they wished the Union to represent them, but this suggestion was not *not* acceptable to the respondent or to the Association.

At the end of 4 days, when an apparent impasse had been reached, the respondent requested the Association to present its petitions for examination. On the morning of May 29, 1937, the respondent issued a public statement, announcing that it had examined and counted the signatures on the petitions; that the petitions had been signed by 1,383 employees, which constituted more than a majority of the approximately 2,000 persons employed at the Pittsburgh

plant; and that the respondent would enter into collective bargaining with the Association as the sole representative of the employees in the plant.

Negotiations between the respondent and the Association for the following 3 days resulted in an agreement being reached between the parties concerning wages, hours, and working conditions. The terms of the agreement were incorporated in a bulletin which was mailed by the respondent [fol. 102] to each of its employees on June 1, 1937. The strike, however, continued and prevented the resumption of operations within the plant.

Shortly thereafter the Union sought the aid of various Federal and State mediators. On June 4, 1937, all parties agreed in writing to an election to be conducted by the Regional Director of the National Labor Relations Board for the Sixth Region. Under the terms of the agreement both the Union and the Association were to be on the ballot, the respondent agreeing that it would recognize the organization receiving a majority of the votes cast and within 10 days after announcement of the results of the election commence negotiations with such organization for the purpose of reaching an agreement relating to wages, hours, and working conditions. The Union's consent, however, was qualified by a stipulation simultaneously entered into by all the parties that the holding of the election would not prejudice the right of any party who had filed "affidavits" before the Board. This stipulation was intended to allow the Union to continue the prosecution of charges which had been filed by it with the Regional Director for the Sixth Region on May 27, 1937, and which alleged, inter alia, that the Association was a company-dominated union.

The election was held on July 8, 1937. Out of 1,930 votes cast, the Union received 1,079, the Association 803; 3 ballots were void and 45 challenged. The plant was reopened shortly after the holding of the election.

Pursuant to its agreement the respondent entered into negotiations with the Union, the first meeting being held June 17, 1937. Numerous conferences between the parties culminated on August 15, 1937, in the posting of a bulletin on bulletin boards throughout the respondent's plant stating that an "understanding" had been reached concerning enumerated provisions relating to wages, hours, and working conditions.

B. Interference, restraint, and coercion

Unveiled hostility by the respondent's supervisory officials greeted the employees in their attempts to organize. That such an attitude was not unexpected is indicated by the fact that from January to April the activities and meetings of the Union had been carried on in secret.

Five employees testified that Heinrich, superintendent of the Pittsburgh plant, talked to them during April about [fol. 103] unions. Heinrich is alleged to have told three of the witnesses that he had been informed they had attended a Union meeting, and to have then pointed out to them the benefits they had received in working for the respondent. In the case of another of the five, Heinrich is alleged to have stated, in addition to pointing out the benefits of working for the company, that the employee would not fare so well if a union came into the plant. Heinrich denies that he made such statements. His unqualified denials of any anti-union activities are not convincing under the facts of this case.

Locke, foreman of the bean building, and Vajentic, a foreman of one division of the bean building, are also charged with expressing sentiment against the Union. Locke is alleged to have stated to Maternick, an employee, that he understood Maternick was "one of these Bolshevists"; to have asked Maternick and Ahel, another employee, what they would "get from a union"; and to have told Ahel that he would be sorry he had joined the "outside" union. Locke's denials, in the light of his other activities set forth below, are likewise unconvincing. Vajentic was not called by the respondent; there is, therefore, no denial of testimony, which seems credible to us, that Majentic asked Canjar what he was trying to do to the respondent by attending a Union meeting the night before, that the company had always been good to him and that if the Union came in he would lose his insurance and social security; that Vajentic told Maternick that if the Union came in, Howard Heinz would shut down the plant rather than deal with it; and that Vajentic told Vilha, another employee, that if a union was organized in the plant it might cause all of them to lose their jobs.

Hayes, also a foreman, is alleged to have told Frank Koontz, "Don't be like that dumb brother of yours. If anyone asks you to join the outside union, tell them to

go to hell"; to have told John Koontz that the Union president was getting "$5 a head" for every member signed up in the Union; and to have asked John Warnick, what he thought of his "dumb buddy" who "after having 13 years of service with the H. J. Heinz Company, he turns around and signs up with an outside union" which "is led by a foreigner that hasn't even got a citizen's paper." Hayes' denials of having made each and everyone of the numerous statements are particularly unconvincing.

[fol. 104] Brooks, a foreman, and Schirer and Fisher, foreladies, were not called to deny that they had engaged in similar anti-union activities attributed to them by witnesses at the hearing.

The above instances are cited merely as examples of the respondent's interference, restraint, and coercion of employees in their rights to self-organization. Many other instances, even though denied, are clearly proved by the testimony.

We find that the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. Domination and interference with the formation and administration of the Association

During the time this coercion and interference with the right of employees to self-organization was being exercised, the Heinz Employees' Association first appeared in the plant. Bennett, a mechanic in the can department, testified that he conceived the idea in January, 1937, of forming an "inside" organization for the purpose of keeping any other organization out of the plant and to prevent strikes. Bennett testified that at that time he solicited and secured aid in forming the organization from Frank Kirschner, William Ubrey, and John Ubrey, all machinists, and Eddie Grznkowski,* an inspector and repairman. We do not consider this testimony wholly convincing, even though the other four named as co-originators testified to the same facts, since the record does not indicate a single instance in which any other person was solicited to join the Association prior to April, 1937.

Beginning in April and continuing in May, petitions, in

* Known as Eddie Kranz.

which the signers authorized the Association to act as collective bargaining agent, were circulated among the employees while at work in the plant. The five employees named as the originators of the organization were active in circulating the petitions. Other employees, many of them group leaders or departmental timekeepers, were also active in soliciting signatures to the petitions.

It is not contended that departmental timekeepers occupy supervisory positions. Much testimony was adduced by the Union and the respondent as to the character of the position [fol. 105] of group leaders, the Union contending that they are supervisory employees, the respondent that they are not. The evidence shows that each main division of the Pittsburgh plant has a foreman. Each subdivision, in turn, has foremen and foreladies who are directly responsible to the foremen of the main divisions. Groups of employees in each subdivision are further supervised by group leaders. All foremen and foreladies receive a salary and dvote themselves exclusively to supervisory work. Group leaders are paid hourly, do not attend foremen's meetings, and work with the employees whose work they supervise. The respondent contends that group leaders are not supervisory employees because they have no authority to hire or discharge employees. This criterion is not conclusive in the determination of the supervisory character of the position of group leaders under the system of operation employed. The record indicates that all hiring in the Pittsburgh plant is done through the employment office and that even foremen of main divisions cannot discharge an employee without authority, in each instance, from the superintendent. More significant is the testimony of employees who state that group leaders are their "bosses" because they give orders which must be obeyed. Certain group leaders testified that the foremen held them responsible for the work performed by their groups. Significant also is the testimony of Greenier, a group leader who was active in soliciting members for the Association, who testified that when Frank Koontz asked Greenier to join the Union, Greenier "ordered" him back on the conveyor, Heinrich, likewise, admitted the supervisory character of group leaders by testifying:

"Offhand I would say (there are) probably 250 that you would call supervisors in a sense • • • just the fore-

men and foreladies are salaried; the others are all hourly workers."

Moreover, it is unnecessary for us to decide whether or not group leaders occupied positions of such supervisory character that their actions alone would bind the respondent. There is evidence in the record of illegal activities by employees whose supervisory capacity is not denied.

It is denied by the foremen and foreladies of some depart- [fol. 106] ments that they knew of the activities carried on during working hours in behalf of the Association. In other departments, whether or not knowledge is denied by supervisors, it is apparent that they could not have been unaware of what was being done. The activities of Armstrong, an employee, in addition to showing the participation of one foreman in the affairs of the Association, may be cited as an example of how openly these activities were carried on. On April 27, Brooks, foreman of the main division in which Armstrong worked, assembled 40 to 50 employees in the division and addressed them from 20 to 30 minutes during working hours. Brooks announced that he was not speaking for the company, that his remarks represented his personal opinion. He pointed out the amount of money collected by the American Federation of Labor and the salary paid to President Green and stated that the employees should not join that type of union. Brooks also stated, "Now, I am not trying to influence you in any way, but why not have a union of our own here?"

The following morning Brooks sent for Armstrong and asked Armstrong what he thought of unions. Armstrong replied that he wasn't in favor of them, and Brooks expressed pleasure at his attitude. In the afternoon of the same day, Grankowski, previously mentioned as one of the five originators of the Association, gave Armstrong several petitions and directed him to begin getting signatures immediately. When Armstrong protested that he was supposed to be working, Grankowski replied that his foreman would let him go. Armstrong on that day and for about 2 to 3 hours per day for an entire week circulated through the entire building getting signatures. Armstrong's work required his presence constantly at a machine. He testified that not only did Mozeyka, his immediate foreman, not object but that Mozeyka placed another employee on the

machine to substitute for Armstrong while he was securing the signatures. Neither Armstrong nor other employees engaged in soliciting members for the Association were docked for the time spent in those activities.

On the second day during which Armstrong solicited members for the Association, he was stopped in another department by a foreman who asked whether Brooks knew what he was doing. Armstrong then went to Brooks and told him that he was getting signatures to the petitions. Brooks examined the petitions and remarked, "Yes, I have seen [fol. 107] them. All right." Three or 4 days later Brooks called Armstrong into the office and stated, "This thing isn't moving fast enough. The names aren't coming in fast enough. Why don't you get some help? For instance, get Andy Hubstenberger from the first floor and Louis Beniquista and Andy Porack from the seventh floor." Armstrong, who testified that he considered he had been given a promotion by being requested to secure signatures to the petition, secured the aid of two of the three employees suggested. The respondent failed to call Brooks or Mozeyka to the stand, and Armstrong's testimony is undenied on the record.

Locke, a foreman previously mentioned as having expressed antipathy to the Union, likewise assembled the employees in his department. Locke read them a prepared statement in which he stated that the petitions which most of them had signed the day before expressing their willingness to join the Association had been stolen. Locke stated that he was speaking "as an individual of H. J. Heinz Company"; that he had heard many rumors, among others, that if the Association gained a majority, wages would be cut; that such a statement was untrue, wages depended largely "on how profitable business was." Locke also stated that he considered it only fair that the employees "should all be again given the opportunity to show that you want to join the Association of Heinz Employees," and announced that a petition would be placed on the timekeeper's desk "where all of you who signed before may now sign again in perfect confidence that you will be protected in your right to express your opinions as you see "fit" and where "anyone of you who did not sign may also sign at this time if you wish." Locke's sentiment was not obscured by his statements that the employees' wishes "will

be protected, whether you want to join the Heinz Association or the A. F. of L., some of the men are interested in" and "if there are any who wish to join the A. F. of L., I am sure there are men here who will take care of them and see that they get signed up." Locke made no effort to secure someone to take signatures for Union membership, but he did stand near the timekeeper's desk while the Association's petition was being signed.

Andy Vajentic, foreman in the bean baking department, was not called to deny that he solicited Belovitch, Martof, [fol. 108] and Mariac to join the Association. Dominic Vajentic, a brother of the foreman, does not deny that he openly solicited signatures to the petitions in Andy's department.

Maurice Shindler is a highly skilled machine designer who, although not shown to have any supervisory power, occupies a position of such character as entitles him to eat in the cafeteria reserved for officers and foremen. Shindler testified that on the evening of May 20, while he was having dinner in the cafeteria, Hayes, general foreman, came in and sat down beside him. Shortly afterwards Paliveda and Skertish, and two other foremen whose names he did not know, came in and joined Hayes, Shindler testified:

"After being seated and greetings exchanged, Hayes said to Paliveda 'How did you make out?' Paliveda began to enumerate that he spoke to a certain girl, and she informed him that she had signed up with the outside union, wouldn't have anything to do with the inside union. He talked to her, he said, the best he could. And he said, "Hayes, do you remember how she came and begged for a job, and the father also implores us to put her on, and now she shows her gratitude by joining the outside union.' And the whole tone of the conversation was that Mary this or Molly this, I saw her. She has joined the outside union. I have talked to her. I did the best I could. I couldn't do anything. Others I have neutralized. Others have paid their initiation fee.' And during the course of the conversation he mentioned that he had seen all of the 26 names on the list that Hayes gave him and had talked to them."

"Mr. Skirtish also reported in the same vein."

Hayes, Palevda and Skertish each denied that this conversation took place. Shindler seems a very credible wit-

ness, however. Paliveda is unconvincing. Skertisli testified he couldn't have made such a report, "because Mr. Heinrich, the superintendent, wanted me not to talk unions or to have anything to do with them." We consider Hayes' denial, viewed in the light of his consistent denials that he engaged in any of the activities to which numerous witnesses testified, unconvincing.

It is clearly established that Hargraves, a salaried em- [fol. 109] ployee who is described as the respondent's "good will man," was active in the Association during this time, although he resigned from membership when the Association's constitution and bylaws, which exclude salaried employees from membership, were adopted. Shindler also testified that he overheard Hargraves asking one of the stenographers in the respondent's office to take the minutes at an Association meeting, and that when she refused, Hargraves stated he has absolute proof that the Union "was organized by Croation Communists who are getting orders from Moscow." Hargraves was not called as a witness by the respondent.

Although there is additional evidence, the testimony discussed is sufficient to show that the respondent through its supervisory officials has dominated and interfered with the formation and administration of the Association and contributed support to it; and we so conclude.

Counsel for the respondent took the position at the hearing that even if such fact were established, "it all happened in April and May, and whatever damage, if any, was done, was all cured by an election." We do not so view the situation. Bennett, president of the Association, testified that at the time of the hearing the Association had between 1,050 and 1,100 dues-paying members; that since the election the Association had existed for the purpose of carrying on social functions; but as to the future "you can never tell."

Whether the continuance of the Association and its apparent gain in members since the election are due to the impetus given to it by the respondent during April and May, or to the fact that it is continuing to receive aid from the respondent, we do not know. As long as the Association continues, it remains the respondent's weapon against its employees' free exercise of their right to self-organization and to join a union of their own choosing.

We find that the respondent has dominated and interfered with the formation and administration of the Association

and contributed support to it; and that by these activities the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

[fol. 110] D. The refusal to bargain collectively

1. The appropriate unit

The complaint alleges that all of the employees at the Pittsburgh plant, except foremen, assistant foremen, salaried employees, office help, and outside truck drivers, constitute a unit appropriate for the purposes of collective bargaining. This is the unit which, by agreement of the respondent, the Union, and the Association, was used as the basis of the consent election held on June 8, 1937. Supervisory, clerical or office help, and salaried employees are normally excluded in an industrial unit; their exclusion therefore needs no further comment. Outside truck drivers were excluded on the grounds that they are members of Local 249 of the International Brotherhood of Teamsters, Chauffers, Stablemen, and Helpers of America, likewise affiliated with the American Federation of Labor, and have dealt with the respondent as a separate unit. We see no objection to their exclusion for these reasons.

We find that all of the employees at the Pittsburgh plant of the respondent, except foremen, assistant foremen, salaried employees, office help, and outside truck drivers, constitute a unit appropriate for the purposes of collective bargaining, and that such a unit insures to the respondent's employees the full benefit of their rights to self-organization and otherwise affectuates the policies of the Act.

2. Representation by the Union of a majority in the appropriate unit

As previously stated the Union received 1,079 votes out of a total of 1,930 ballots cast in the consent election held on June 8, 1937, by the Regional Director for the Sixth Region. There is no evidence in the record as to the desires of a majority of the employees since that time, except the statement that at the time of the hearing the Association had approximately 1,050 to 1,100 dues-paying members. Since by the statements of the Association's president, the Association has existed since the election solely for social purposes, such membership is not inconsistent with the

desire of a majority of the employees to have the Union represent them for the purposes of collective bargaining. Moreover, we can not consider membership in the Association as a free will act because of our finding that the Asso- [fol. 111] ciation was dominated by the favoritism shown to it by the respondent. In the absence of evidence to the contrary there is a presumption that a majority of the employees continues to desire the Union to represent them.**

We find that on June 8, and thereafter, a majority of the employees in the unit which we have found appropriate had designated and selected the Union as their collective bargaining agent and that, pursuant to Section 9(a) of the Act, the union was the exclusive representative of the employees in the appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

As previously indicated, negotiations between the Union and the respondent looking to an agreement concerning wages, hours, and conditions of employment began on June 17, 1937. At the six or seven meetings which were held between June 17 and 28, the respondent was generally represented by Riley, Robert O. Shinabarger, a director who is assistant to S. Mueller, one of the vice presidents of the respondent, and Donald W. Ebbert, an attorney. At these conferences the subject matter of discussion between the groups was largely confined to the provisions of a proposed contract which had been submitted by the Union to the respondent on June 17. The contract was in the form of a bilateral agreement, the first paragraph of which provided that it was an agreement between the respondent and the Union, and provided for the signatures of both parties. The proposed contract also provided that the agreement should be in effect for a period of time, the exact time being left blank.

During the negotiations each paragraph of the contract submitted by the Union on June 17, was discussed, Riley and Shinabarger indicating in some instances that the proposals would not be agreed to by the respondent, and in

** Matter of United States Stamping Company and Enamel Workers Union, No. 18630, 5 N. L. R. B. No. 29.

other instances that the respondent was unwilling to grant the demands of the Union in their entirety. At no time during this period did Riley or Shinabarger indicate to the Union committee that the respondent was unwilling to enter into a written agreement which would be in effect [fol. 112] for a period of time, though they unqualifiedly stated that other provisions of the proposed agreement, such as the closed shop, would not be accepted by the respondent.

The one issue on which the parties were furthest apart during these discussions related to wage increases. The Union had demanded a 20 per cent increase, with certain minima for men and for women. The respondent had offered an increase of 10 per cent, with lower minima. Although the proposed contract submitted by the Union on May 21 had only asked for a 10 per cent increase, the Union felt that a larger increase was justified in view of the events that had transpired since May 21, the most important of which was that the respondent had agreed with the Association to a 10 per cent increase on June 1, which increase, however, had never been put into effect. The position of Riley and Shinabarger from the beginning of the negotiations was that the respondent would not agree to any increase in excess of 10 per cent.

At the meeting of June 26, neither the Union nor the respondent having receded from their respective positions in respect to wage increases, Wilner, the attorney for the Union, proposed that some higher official of the respondent be present at the next meeting. The proposal was the outcome of statements by Riley and Shinabarger that their actions were subject to the approval of the other directors of the respondent.

In accordance with the suggestion, Hugh C. Anderson, a vice president of the respondent, attended the meeting of June 28. Anderson sat throughout the meeting, which lasted about one and a half hours, without speaking. Wilner then asked Anderson for a statement. Anderson replied that nothing had been stated which had not been previously discussed according to the reports which he had received; that the directors had full confidence in Riley and Shinabarger; that the respondent's offer was a 10 per cent increase and that the Union could "take it or leave it." Wilner and other members of the Union who were present testified that Anderson, in addition, stated that Riley and Shina-

barger had full authority to act for the respondent. Although this is denied by the respondent's witnesses we believe that events which followed reasonably indicate such authority.

The Union, feeling that an impasse had been reached, [fol. 113] again solicited the aid of State and Federal mediators. The respondent refused the suggestion of the mediators that the matter be submitted to mediation but agreed to meet again with the Union representatives on July 1. Again the respondent failed to offer any increase in excess of its original counter-proposal. The Union representatives left this meeting with the intention of submitting the respondent's proposals concerning wage increases, hours, and vacations to the Union membership at a meeting to be held that night. Shortly after the representatives of the Union had left this conference, Riley sent for Kracik, the international representative of the Amalgamated. Kracik returned to the plant, where Riley bluntly informed him that the respondent did not intend to enter into any signed agreement with the Union.

The Union membership agreed at the meeting that night to accept the respondent's counter-proposals, which pursuant to previous agreement, went into effect in the plant on the following day, but as of July 1. On the following day, July 2, at a meeting between representatives of the respondent and the Union, Wilner voiced violent objection to the respondent's position that it would not enter into a signed agreement with the Union. Riley stated that it was the policy of the respondent not to enter into signed agreements with unions and that the respondent did not consider the Act required it to do so. It was finally agreed at this meeting that Wilner and Ebbert should incorporate the terms on which an understanding had been reached in a memorandum.

Some time before July 14, Ebbert prepared such a memorandum, and submitted it to Wilner, who made certain corrections. On July 14, Riley, Shinabarger, and Ebbert, representing the respondent, met with Wilner and other representatives of the Union to discuss the draft which Wilner and Ebbert had agreed correctly expressed the terms on which an understanding had been reached. The committees made certain other changes and all present agreed that Ebbert should prepare a final draft and that this draft should be posted on the respondent's bulletin boards on the following day. It was also agreed that a

copy should be sent by Ebbert to Wilner. While Riley denies that such arrangements had been made, Wilner received a copy of a corrected memorandum from Ebbert on the following day. This fact clearly indicates that Ebbert [fol. 114] likewise understood at the meeting of July 14, that Riley and Shinabarger had agreed to the form of the memorandum and establishes the fact that no indication had been given that their agreement was subject to further action by other directors of the respondent. The memorandum received by Wilner is dated July 15 and entitled "Notice to All Employees." The first paragraph states:

"Following the recent election held under the supervision of the National Labor Relations Board, in which the Canning and Pickle Workers' Local Union No. 325 was selected as the collective bargaining agency for our employees, we have had meetings with a committee from that organization and after several weeks of negotiation, have agreed with them as follows:"

The agreement then set forth certain provisions relating to wages, working hours, vacations, seniority, adjustment of grievances, discharges, safety and health, and concluded with the provision

"The wage rates and other matters hereinabove set forth shall remain in effect until further notice."

The copy received by Wilner contained at the end the typewritten signature of the respondent.

Wilner, upon being notified during the day that the memorandum had not been posted in the plant, called Ebbert for an explanation. Ebbert stated that Anderson had objected to the memorandum and, in addition, felt that it should be submitted to Howard Heinz, president of the respondent, who was then out of the city, before it was posted.

On July 23 or 24, Ebbert informed Wilner that Heinz had seen the memorandum, and wished to rewrite it in its entirety and that no further action could be taken at that time.

On July 29 or 30, Ebbert submitted to Wilner a bulletin which had been prepared by Heinz. This bulletin differed materially from the one which had been agreed upon on July 15. It was entitled:

"Labor Relations Bulletin, Pittsburgh Factory, H. J. Heinz Company"

The opening paragraph read:

"According to the provisions of the National Labor Re-
[fol. 115] lations Act, we have bargained with the certified collective bargaining agency for our employees (not including, however, foremen, assistant foremen, who are paid on a monthly basis, policemen, outside truck drivers, office employees, or factory employees paid on a monthly basis) and the following understanding has been reached:"

In no place in the bulletin was the Union named nor did the signature of the respondent appear at the end. The body of the bulletin constituted a complete rewording of the memorandum of July 14. Material changes had been made, also, in the substantive provisions. The bulletin eliminated all details concerning the procedure to be followed in the handling of grievances, eliminated the right of the Union to aid in the determination of wage rates for certain employees excepted from the standard rates, made overtime payable for the time worked in excess of 44 hours a week, instead of after 40 hours as stated in the memorandum, provided that overtime rates should not apply to the handling of perishable products, an exception which the memorandum of July 14 stated had not been "agreed" to by the Union, and made rates for beginners payable for 3 months instead of for 1 month as provided in the memorandum.

On July 31, 1937, Wilner met with Ebbert and Bostwick, attorneys for the respondent. Wilner protested against the procedure which had been followed by the respondent throughout the negotiations and the bulletin as prepared by Heinz in particular. Wilner stated, however, that decision would be up to the Union and that he would refer the bulletin prepared by Heinz to the Union.

The next meeting held between any of the interested parties occurred on August --. The delay in this instance alone is not attributable to the respondent. Riley, Shinabarger, and Bostwick represented the respondent at this meeting. The representatives of the Union voiced great dissatisfaction with the bulletin on several grounds, particularly the elimination of the name of the Union in the introductory paragraph and elimination of the details concerning the

procedure to be followed in the handling of grievances. Representatives of the respondent stated that both changes had been made by Heinz because he wished to reduce the length of the bulletin. Although it was pointed out that the [fol. 116] name of the Union was no longer than the phrase "certified collective bargaining agency for our employees," the respondent's representatives refused to agree to the change. In only two material particulars did the respondent's representatives agree to a revision. The payment of overtime for work in excess of 44 hours a week was changed to payment for work in excess of 40 hours, and the name of the Union was put in the paragraph relating to grievances. At the conclusion of the meeting, the representatives of the Union agreed that the bulletin should be posted on the bulletin boards of the respondent. The bulletin was posted by the respondent on August 15, On August 17, Tasker, business agent of the Union, wrote the following letter to Riley:

"This is to advise you that the notice you have posted on your bill-board does not in our opinion constitute an agreement within the intent of the memorandum of understanding entered into by and between our Union and you on June 4, 1937, nor is it evidence of bona-fide collective bargaining within the meaning of that understanding or the National Labor Relations Act.

"Nevertheless, we realize that the concessions gained for the employees of the H. J. Heinz Company were the direct results of our efforts and we are anxious to conserve for the Heinz employees the benefits which they so richly deserve and for which we strove so hard.

"We, therefore, do not object to you (sic) posting of the notice but intend to lay this matter before the National Labor Relations Board in order to have that impartial agency determine whether or not you have bargained in good faith and whether you have done what our memorandum of understanding of the 4th of June, 1937, and the law requires of you."

It is plain from the foregoing recital of facts that the respondent has not bargained collectively with the Union within the meaning of Section 8 (5) of the Act.

In the first place it is not clear that, although an accord on terms was reached, the respondent was willing to embody

those terms in an agreement binding upon the parties. The respondent contends that there was such an agreement. The Union in its letter of August 17, apparently thinks that there [fol. 117] was not. If there were no such agreement, there was of course a violation of Section 8 (5) within the principles set forth in Matter of St. Joseph Stock Yards Company and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 159.† However, it is not necessary to decide this matter here, since the respondent did not fulfill its obligation under Section 8 (5) in two other vital respects.

First, the respondent has failed to recognize the Union and, assuming an agreement was reached, to agree with the Union as the representative of its employees. In the "Labor Relations Bulletin" posted on August 15, representing the culmination of the negotiations, the respondent flatly refused to name the Union as the collective bargaining agent or to give it any express credit for the results reached. Riley admitted that the respondent refused to do this for "psychological" reasons. He explained these reasons as, "just a matter of trying to pound some of the boys down a bit," "a tendency to get this wild colt back on the reservation," and that the rights of the minority "should be protected." The attitude of the respondent in this matter is in strong contrast to its attitude towards the Association. In the bulletin which had been mailed to the employees on June 1, which incorporated the agreement between the Association and the respondent, not only had the name of the Association been used, but, in addition, the names of the five officers and the 15 representatives of the Association had been prominently set forth. The difference in the respondent's treatment of the two organizations must be viewed in the light of its antipathy towards the Union, and its use of the Association to prevent self-organization. It clearly wished to impress its employees with the benefits of membership in the Association and to convince them that no benefits had been gained by virtue of membership in the Union.

The respondent's fixed determination not to accord the Union the recognition contemplated by the Act is further evidenced by its own analysis of what it considers its liability under the bulletin of August 15. Officers of the re-

† 2 N. L. R. B. 39.

spondent testified that they have been advised and that they believe that the respondent is legally bound by the provisions set forth in the bulletin. Riley, however, admitted that the "agreement" which exists is between the respond- [fol. 118] ent and its employees and not between the respondent and the Union. Assuming that an "agreement" with someone had been reached, the failure of the respondent to make or to acknowledge that it had made an "agreement" with the Union, although the Union was the party with whom it was obligated under the Act to bargain collectively, was a failure to recognize and deal with the Union as the collective bargaining agent of its employees.

Secondly, the respondent refused to enter into a written signed agreement. The respondent does not deny that it, in the first instances, refused to enter into a written agreement. In fact, officials of the respondent testified that it was the respondent's fixed policy not to enter into written signed contracts with any labor organization.

The respondent has sought to show, however, through an article which was published in the Catholic Radical Alliance on July 8, 1937, that the Union was also unwilling to enter into a written agreement. The author of the article was Father Rice, a Catholic priest who had accompanied the Union committee in some of its meetings with the respondent prior to July 1. In the article Father Rice stated that the terms offered by the respondent had been submitted to the employees at a mass meeting the week before (apparently referring to the meeting on the night of July 1), and that the employees, wanting peace, agreed to accept the terms offered but would not agree to sign a contract for a term. It does not appear from the article, however, that the Union did more than take the position that it was unwilling to agree to be bound by the arrangements which the Company had offered for any specific length of time. In any event, as we have seen above, on the following day Wilner, authorized representative of the Union, objected strenuously to the respondent's refusal to enter into a signed written agreement. We conclude, therefore, that the Union never abandoned either its demand or its desire for a written signed agreement providing full recognition of the Union and embodying an understanding reached as a result of genuine collective bargaining.

In Matter of Inland Steel Company and Steel Workers Organizing Committee and Amalgamated Association of

Iron, Steel, and Tin Workers of North America, Lodges [fol. 119] No. 64, 1010, and 1101,‡ we held, in a comparable situation, that an employer who refuses, upon the request of the collective bargaining representative, to enter into a written agreement has refused to bargain collectively within the meaning of the Act. These reasons for the conclusion, set forth in that decision, are equally applicable to this case and will not be repeated here. The facts of this case clearly establish that the refusal of the respondent to enter into such an agreement was, as in the Inland case, based on the respondent's desire not to recognize the Union and bargain with it in good faith.

Beyond the definite refusal to recognize the Union or to make a written agreement with it as hereinabove discussed, we consider that the respondent's actions throughout the course of negotiations indicate that it was not acting in good faith. Officials of the respondent testified that it had always been the policy of the Company not to enter into written agreements with labor organizations. Knowing this, the respondent nevertheless failed to disclose this policy to the Union during the negotiations which settled the strike. During its early negotiations with the Union, the respondent not only failed to notify the Union that it would not enter into a signed agreement, but made no objection to the form of the Union agreement, thus affirmatively giving the Union the impression that it had no objections to entering into a written agreement.

Furthermore, it is apparent that no substantial concessions relating to wages and hours were granted to the employees after negotiations with the Union, which had not already been acceded to by the respondent at the time of its negotiations with the company-dominated Association. In at least one important provision, the Association had gained better terms than the Union.§ The attitude of the respondent during the negotiations was that expressed by Anderson in the meeting of June 28, namely, that the re-

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‡ 6 N. L. R. B. No. 66.

§ All employees called out for work were guaranteed at least 4 hours continuous work under the agreement with the Association; under the agreement with the Union any employee instructed to report for work and who was sent home because work was not available received a minimum of 2 hours' pay.

[fol. 120] spondent offered certain terms which the Union could "take or leave."

The actions of Anderson in refusing to allow the posting of the memorandum of July 14 and of Heinz in rewriting that memorandum, indicate, at the least, the employment of dilatory tactics, designed to further discredit the Union.

Finally, we do not consider that the Union by continuing negotiations beyond July 1, 1937, and by agreeing to the posting of the bulletin of August 15, at any time indicated that the procedure of posting a bulletin was acceptable as a substitute for a written agreement signed by the parties. By its letter of August 17, 1937, the Union specifically notified the respondent that such a procedure was not acceptable. The Union has not, therefore, waived its right to insist before this Board that the respondent has failed to bargain collectively in accordance with the provisions of the Act.

We therefore conclude that the respondent has failed and refused to bargain collectively with the representatives of its employees within the meaning of Section 8 (5) of the Act; and that by such failure and refusal the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practice upon commerce

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and with foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Since we have found that the respondent dominated and interferred in the formation and administration of the Association and contributed support to it and since the Association, so long as it continues, constitutes a threat to the rights of self-organization of those employees, the policies of the Act will not be effectuated unless the Association is disestablished. We will, accordingly, order the respon- [fol. 121] dent to disestablish the Association immediately

as the representative of any of its employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment.

Since the respondent has failed to bargain collectively in good faith with the Union as the representative of its employees, we will order the respondent, upon request, to enter into collective bargaining with the Union for the purpose of reaching an agreement with the Union covering wages, hours, and working conditions; and, if any understanding is reached on any of such matters, and the respondent is requested to do so by the Union, to embody such understanding in a written signed agreement.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

Conclusions of Law

1. Canning and Pickle Workers, Local Union No. 325 and Heinz Employees' Association are labor organizations within the meaning of Section 2 (5) of the Act.

2. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. The respondent, by dominating and interfering with the formation and administration of Heinz Employees' Association, and by contributing support to the said organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

4. All the employees at the Pittsburgh plant of the respondent, except foremen, assistant foremen, salaried employees, office help, and outside truck drivers, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b) of the Act.

5. Canning and Pickle Workers, Local Union No. 325 was on June 8, 1937, and at all times thereafter has been, the exclusive representative of all employees in such unit for the purposes of collective bargaining, within the meaning of Section 9(a) of the Act.

6. The respondent, by refusing to bargain collectively [fol. 122] with Canning and Pickle Workers, Local Union No. 325 [illegible] the exclusive representative of the employees in the aforesaid unit, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the findings of fact and conclusions of law and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, H. J. Heinz Company, Pittsburgh, Pennsylvania, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From in any manner dominating or interfering with the administration of the Heinz Employees' Association, or with the formation or administration of any other labor organization of its employees, and from contributing support to the Heinz Employees' Association, or any other organization of its employees;

(b) From refusing to bargain collectively with Canning and Pickle Workers, Local Union No. 325 as the exclusive representative of all the employees at the Pittsburgh plant, except foremen, assistant foremen, salaried employees, office help, and outside truck drivers.

(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from the Heinz Employees' Association as the representative of any of its employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment, and com-
[fol. 123] pletely disestablish Heinz Employees' Association as such representative;

(b) Upon request, bargain collectively with Canning and Pickle Workers, Local Union No. 325, as the exclusive representative of all the employees at the Pittsburgh plant, except foremen, assistant foremen, salaried employees, office help, and outside truck drivers, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached on any of such matters, embody said understanding in a written signed agreement for a definite term to be agreed upon, if requested to do so by Canning and Pickle Workers, Local Union No. 325;

(c) Post notices immediately on the bulletin boards in the Pittsburgh plant stating: (1) that the respondent will cease and desist as aforesaid; (2) that the Heinz Employees' Association is disestablished as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or any other conditions of employment, and that the respondent will refrain from any recognition thereof; and (3) that, upon request, the respondent will bargain collectively with Canning and Pickle Workers, Local Union No. 325 as the exclusive representative of all the employees in the unit which we have found appropriate; and keep said notices posted for a period of at least thirty (30) consecutive days from the date of posting;

(d) Notify the Regional Director for the Sixth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith.

Signed at Washington, D. C., this 9th day of April, 1938.
Edwin S. Smith, Member; Donald Wakefield Smith, Member, National Labor Relations Board. (Seal.)

[fol. 124] BEFORE NATIONAL LABOR RELATIONS BOARD

Case No. C-304—Filed April 9, 1938

AFFIDAVIT AS TO SERVICE

DISTRICT OF COLUMBIA, ss:

I, Bertram Katz, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 9th day of April, 1938, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

Canning and Pickle Workers, Local Union No. 325, 922 E. Ohio Street, N. S., Pittsburgh, Penna.

Thorp, Bostwick, Reed & Armstrong, 2812 Grant Building, Pittsburgh, Pennsylvania.

Heinz Employees Association, c/o I. C. Bennett, President, R. D. No. 6, Box 736-H, Mt. Oliver Post Office, Pittsburgh, Pa.

Bertram Katz.

Subscribed and sworn to before me this 9th day of April, 1938. Harold G. Wilson, Notary Public, District of Columbia. My commission expires May 15, 1941.

Return Receipt

Registered Mail.

(Receipt for registered article No. 69064 omitted.)

(Original return receipt signed by Lillian J. Kozar, agent [fol. 125] of Canning & Pickle Workers, Local Union No. 325 omitted.)

Return Receipt

Registered Mail.

(Receipt for registered article No. 69063 omitted.)

(Original return receipt signed by Carl Salyer, agent of Thorp, Bostwick, Reed & Armstrong omitted.)

Return Receipt

Registered Mail.

(Receipt for registered article No. 69062 omitted.)

(Original return receipt signed by Mrs. I. C. Bennett, agent of I. C. Bennett, Pres., Heinz Employees Association omitted.)

Before National Labor Relations Board

Case No. C-304—Filed May 11, 1938

To Messrs. Thorp, Bostwick, Reed & Armstrong; Edmund M. Toland, Esquire, Attorneys for H. J. Heinz Company:

Notice

Please Take Notice that on Friday next, May 13, 1938, In the Matter of H. J. Heinz Company and Canning and Pickle Workers, Local Union No. 325, affiliated with Amal- [fol. 126] gamated Meat Cutters and Butcher Workmen of North America, American Federation of Labor, Case No. C-304, the National Labor Relations Board, unless sufficient cause to the contrary shall then appear, will vacate and set aside its findings and order in said case made April 9, 1938, for the purpose of further proceedings before the Board.

National Labor Relations Board, Nathan Witt, Secretary.

Dated May 7, 1938.

Receipt of the above notice acknowledged this 9th day of May, 1938.

Edmund M. Toland, Attorneys for H. J. Heinz Company.

Before National Labor Relations Board

Case No. C-304—Filed May 9, 1938

Affidavit as to Service

District of Columbia, ss:

I, Joseph Zambuto being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.;

that on the 9th day of May, 1938, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Board's [fol. 127] Notice (of intention to vacate order) to the following named persons, addressed to them at the following addresses:

Canning and Pickle Workers, Local Union No. 325, 922 E. Ohio Street, N. S., Pittsburgh, Pennsylvania;

Heinz Employees Association, c/o I. C. Bennett, President, R. D. No. 6, Box 736-H, Mt. Oliver Post Office, Pittsburgh, Pa.

Joseph Zambuto.

Subscribed and sworn to before me this 9th day of May, 1938. John E. Lawyer, Notary Public, District of Columbia. My commission expires September 8, 1939. (Seal.)

Return Receipt

Registered Mail.

(Receipt for registered article No. 69835 omitted.)

(Original return receipt signed by M. Rose, agent of Canning and Pickle Workers, Local Union No. 325 omitted.)

Return Receipt

Registered Mail.

(Receipt for registered article No. 69836 omitted.)

(Original return receipt signed by Mrs. I. C. Bennett, agent of I. C. Bennett, President, Heinz Employees Association omitted.)

[fol. 128] Before National Labor Relations Board

Case No. C-304

Answer of H. J. Heinz Company

H. J. Heinz Company, by Thorp, Bostwick, Reed & Armstrong, its counsel, answering the Notice served upon its counsel on May 9, 1938, shows that H. J. Heinz Company, on April 16, 1938, filed its Petition to set aside the Order of the National Labor Relations Board, dated April 9, 1938,

in the United States Circuit Court of Appeals for the Third Circuit; that said Court thereupon ordered the National Labor Relations Board to certify its record in said proceeding; that such Order was served forthwith upon the National Labor Relations Board prior to its Notice of May 7, 1938, to which this answer is made; that thereupon said Circuit Court of Appeals obtained exclusive jurisdiction of said proceeding and said National Labor Relations Board is without authority to reopen said case for the purpose of further proceedings therein; and H. J. Heinz Company, by its counsel, objects to the proposed vacating and setting aside of the finding and Order for the purpose of further proceedings before the Board.

H. J. Heinz Company, by Thorp, Bostwick, Reed & Armstrong, Its Counsel.

Duly sworn to by Earl F. Reed. Jurat omitted in printing.

[fol. 129] BEFORE NATIONAL LABOR RELATIONS BOARD

* * * * * * *

Present: J. Warren Madden, Chairman; Edwin S. Smith; Donald Wakefield Smith.

Case No. C-304

Filed May 13, 1938

ORDER SETTING ASIDE ORDER

The Board having issued its findings and order in the above case on April 9, 1938; and the transcript of the record in said case not having been filed in any court; and the Board having given notice that on this date, May 13, 1938, unless sufficient cause to the contrary should then appear, it would vacate and set aside its said findings and order for the purpose of further proceedings before the Board; and no sufficient cause to the contrary appearing; and the Board desiring to take further proceedings in this matter;

It is hereby ordered that the findings and order of the Board in this case made April 9, 1938, be and they are

hereby set aside; and that the Board shall take such further proceedings herein as it may consider are necessary or desirable.

Signed at Washington, D. C., this 13th day of May, 1938. J. Warren Madden, Chairman. Edwin S. Smith, Member. Donald Wakefield Smith, Member. National Labor Relations Board.

[fol. 130] BEFORE NATIONAL LABOR RELATIONS BOARD

Case No. C-304

AFFIDAVIT AS TO SERVICE

DISTRICT OF COLUMBIA, ss:

I, Joseph Zambuto being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 13th day of May, 1938, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Order Setting Aside Order to the following named persons, addressed to them at the following addresses:

Thorp, Bostwick, Reed & Armstrong, 2812 Grant Building, Pittsburgh, Pa;

Edmund M. Toland, Esq., Investment Building, Washington, D. C.;

Canning and Pickle Workers, Local Union No. 325, 922 E. Ohio Street, N. S., Pittsburgh, Pennsylvania;

Heinz Employees Association, c/o I. C. Bennett, President, R. D. No. 6, Box 736-H, Mt. Oliver Post Office, Pittsburgh, Pa.,

Joseph Zambuto.

Subscribed and sworn to before me this 13th day of May, 1938. Harold G. Wilson, Notary Public, District of Columbia. My commission expires May 15, 1941. (Seal.)

Return Receipt

Registered Mail.

(Receipt for registeerd article No. 69962 omitted.)

(Original return receipt signed by W. C. Rogers, agent [fol. 131] of Thorp, Bostwick, Reed & Armstrong omitted.)

Return Receipt

Registered Mail.

(Receipt for registered article No. 69963 omitted.)

(Original return receipt signed by R. Lusday, agent of Edward M. Toland, Esq. omitted.)

Return Receipt

Registered Mail.

(Receipt for registered article No. 69964 omitted.)

(Original return receipt signed by Joseph Marak, agent of Canning & Pickles Workers, Local Union No. 325 omitted.)

Return Receipt

Registered Mail.

(Receipt for registered article No. 69965 omitted.)

(Original return receipt signed by Mrs. I. C. Bennett, agent of I. C. Bennett, President, Heinz Employees Association omitted.)

[fol. 132] Before National Labor Relations Board

Case No. C-304—Filed July 13, 1938

Order Directing Issuance of Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order

The Board having issued a Decision and Order in the above case on April 9, 1938, and having on May 13, 1938, vacated said Decision and Order.

It is hereby ordered, pursuant to Article II, Section 38(d) of National Labor Relations Board Rules and Regulations —Series 1, as amended, that Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order shall be issued; and

It is further ordered, pursuant to Article II, Section 38(d) of said Rules and Regulations, that the parties herein shall have the right within twenty (20) days from the receipt

of said Proposed Findings, Proposed Conclusions of Law and Proposed Order, to file exceptions, to request oral argument before the Board, and to request permission to file a brief with the Board.

Dated at Washington, D. C., July 13, 1938.

By direction of the Board:

Nathan Witt, Secretary. (Seal.)

[fol. 133] BEFORE NATIONAL LABOR RELATIONS BOARD

Case No. C-304 (Filed July 13, 1938)

In the Matter of H. J. HEINZ COMPANY and Canning and Pickle Workers, Local Union No. 325, affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America, American Federation of Labor.

Mr. Robert W. Kleeb, for the Board.

Thorp, Bostwick, Reed & Armstrong, by Mr. Earl F. Reed, Mr. Donald W. Ebbert, and Mr. R. G. Bostwick, of Pittsburgh, Pa., for the respondent.

Mary Lemon Schleifer, of counsel to the Board.

Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Canning and Pickle Workers, Local Union No. 325, herein called the Union, the National Labor Relations Board, herein called the Board, by Charles T. Douds, Regional Director for the Sixth Region (Pittsburgh, Pennsylvania), issued its complaint, dated October 26, 1937, against H. J. Heinz Company, Pittsburgh, Pennsylvania, herein called the respondent. The complaint alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1), (2), and (5) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint alleged, in substance, that the respondent had dominated and interferred at the Pittsburgh plant with the formation and administration of [fol. 134] a labor organization known as the Heinz Em-

ployees' Association, herein called the Association, and had contributed financial and other support to it; had refused to bargain collectively in good faith with the Union which had been selected as collective bargaining agent by a majority of the employees in an appropriate unit at the Pittsburgh plant; and by these and other acts had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. Copies of the complaint and accompanying notice of hearing were duly served upon the respondent, the Union, and the Association.

On November 6, 1937, the respondent filed an answer to the complaint, in which the respondent denied that it had engaged in or was engaging in any unfair labor practices affecting commerce within the meaning of the Act, and prayed that the complaint be dismissed.

Pursuant to notice, a hearing was held in Pittsburgh, Pennsylvania, on November 15, 16, 17, 18, 22, 23, 24, and 26, 1937, before J. Raymond Walsh, the Trial Examiner duly designated by the Board. The respondent and the Board were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

The respondent's motion to dismiss set forth in the answer was not renewed at the hearing and no ruling has been made upon it. The motion is hereby denied. At the beginning of the hearing, counsel for the Board moved to amend the name of the Union, designated in the pleadings as Canning and Pickle Workers' Organization No. 325, to Canning and Pickle Workers, Local Union No. 325. The record does not indicate that any ruling was made on the motion. The motion is hereby allowed. Numerous motions and objections to the introduction of evidence were made during the course of the hearing by counsel for the respondent and counsel for the Board. The Board has reviewed the rulings of the Trial Examiner on motions and objections and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On December 1, 1937, the Board, acting pursuant to Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the [fol. 135] proceeding transferred to and continued before the Board.

On April 9, 1938, the Board issued a Decision and Order in the case. On May 7, 1938, the Board served notice upon the respondent, the Union, and the Association of its intention to vacate and set aside its findings and Order for the purpose of further proceedings before the Board. On May 13, 1938, the Board, acting pursuant to Section 10(d) of the Act, issued an Order setting aside the Findings and Order of April 9, 1938.

Upon the entire record in the case, the Board makes the following:

Proposed Findings of Fact

1. The business of the respondent

H. J. Heinz Company, a Pennsylvania corporation, is engaged in the production, sale, and distribution of food products. The principal offices and main plant of the respondent are in Pittsburgh, Pennsylvania. Branch plants of the respondent are located at Ambridge, Chambersburg, and Sharpsburg, Pennsylvania; Princeton, Indiana; Muscatine, Iowa; Henderson, Kentucky; Holland, Michigan; Salem, New Jersey; Medina, New York; Bowling Green and Fremont, Ohio; Winchester, Virginia; and Leamington, Ontario, Canada. In addition, the respondent maintains 89 stations for receiving food products located at various points in Colorado, Indiana, Michigan, Wisconsin, and Canada. Fifty-three salting stations, where in addition to receiving food products some initial treatment of the products takes place, are maintained by the respondent at various places in Colorado, Indiana, Michigan, Wisconsin, and Canada. The respondent has sales offices in 45 principal cities of the United States and 5 cities in Canada. The respondent is the parent of five subsidiary corporations, one of which is an English and another a Spanish corporation.

Approximately 76 per cent of the total value of raw materials used in the Pittsburgh plant of the respondent originate outside the State of Pennsylvania and approximately 78 per cent of the products of the Pittsburgh plant are shipped outside the State of Pennsylvania.

II. The labor organizations involved

Canning and Pickle Workers, Local Union No. 325, is a labor organization, chartered by the Amalgamated

Meat Cutters and Butcher Workmen of North America, [fol. 136] affiliated with the American Federation of Labor. Although the record is not clear, membership in the Union is apparently limited to employees of the respondent engaged in production and maintenance, exclusive of supervisory, managerial, and clerical employees.

Heinz Employees' Association is a labor organization, not affiliated with any other labor organization. It admits to membership employees in the Pittsburgh plant of the respondent, except office employees, foremen, department heads, or those employed in a supervisory capacity with authority to hire and discharge.

III. The unfair labor practices

A. Background of the unfair labor practices

In January, 1937, a group of employees in the respondent's Pittsburgh plant requested the Amalgamated Meat Cutters & Butcher Workmen of North America, herein called the Amalgamated, to aid them in forming an organization within the plant. No organization existed among these employees prior to this time. Conferences and secret meetings were held by the interested employees until April, 1937, when an open drive for organization began and public meetings were held. On May 11, 1937, the Amalgamated granted a charter to the Union.

During April and May, 1937, coincident with the open drive for membership by the Union, an organization known as Heinz Employees' Association also began a drive for members. Bitter rivalry existed between the two factions in the plant.

On May 21, 1937, Frank Kracik, international representative of the Amalgamated, met with H. N. Riley, a director of the respondent in charge of manufacturing. Kracik gave Riley a copy of a contract proposed by the Union and asked for a further meeting for the purpose of negotiating a contract. Riley agreed to meet with the respresentatives of the Union for this purpose on May 24, 1937.

On the morning of May 24, representatives of the Association called Riley and also asked for an appointment to negotiate a contract. Riley met both groups during that day.

At the meeting with the Union, which was the first of the two meetings, Riley demanded proof of the Union's

[fol. 137] claim that a majority of the employees at the Pittsburgh plant had chosen the Union to represent them and that it was entitled, therefore, to act as the sole collective bargaining agent. No method of determining this fact was decided upon since the Union was unwilling to reveal the identity of its members. The meeting adjourned upon Riley's acceding to the Union's request that it be given 24 hours to show the extent of its membership.

At the meeting with the Association, Riley likewise demanded proof from the Association to substantiate its claim that the Association had been selected collective bargaining agent by a majority of the employees at the Pittsburgh plant. The Association offered to show the respondent petitions authorizing the Association to act as collective bargaining agent which, it alleged, had been signed by a majority of the employees at the Pittsburgh plant. Riley refused to examine the petitions, stating that he did not wish to know which employees had joined either group. Riley informed the Association's representatives that the Union likewise claimed to have been selected as collective bargaining agent by a majority of the employees and suggested the advisability of a secret election, a method which had been discussed with the representatives of the Union. The meeting adjourned without any decision being made upon how the conflicting claims of the two organizations should be resolved.

On the same night, apparently dissatisfied with the prospective delay in recognition, the Union voted to strike; the strike being put into effect immediately. During the following 4 days the Mayor of the City of Pittsburgh attempted to settle the strike by securing the consent of the respondent and the two organizations to an election. The Union, claiming that the respondent had dominated and interfered in the formation and administration of the Association contrary to the provisions of the Act, was unwilling to consent to an election if the name of the Association was put on the ballot. The Union indicated its willingness to have an election in which the employees would choose whether or not they wished the Union to represent them, but this suggestion was not acceptable to the respondent or to the Association.

At the end of 4 days, when an apparent impasse had [fol. 138] been reached, the respondent requested the Association to present its petition for examination. On the

morning of May 29, 1937, the respondent issued a public statement, announcing that it had examined and counted the signatures on the petitions; that the petitions had been signed by 1,383 employees, which constituted more than a majority of the approximately 2,000 persons employed at the Pittsburgh plant; and that the respondent would enter into collective bargaining with the Association as the sole representative of the empolyees in the plant.

Negotiations between the respondent and the Association for the following 3 days resulted in an agreement being reached between the parties concerning wages, hours, and working conditions. The terms of the agreement were incorporated in a bulletin which was mailed by the respondent to each of its employees on June 1, 1937. The strike, however, continued and prevented the resumption of operations within the plant.

Shortly thereafter, the Union sought the aid of various Federal and State mediators. On June 4, 1937, all parties agreed in writing to an election to be conducted by the Regional Director of the National Labor Relations Board for the Sixth Region. Under the terms of the agreement both the Union and the Association were to be on the ballot, the respondent agreeing that it would recognize the organization receiving a majority of the votes cast and within 10 days after announcement of the results of the election commence negotiations with such organization for the purpose of reaching an agreement relating to wages, hours, and working conditions. The Union's consent, however, was qualified by a stipulation simultaneously entered into by all the parties that the holding of the election would not prejudice the right of any party who had filed "affidavits" before the Board. This stipulation was intended to allow the Union to continue the prosecution of charges which had been filed by it with the Regional Director for the Sixth Region on May 27, 1937, and which alleged, inter alia, that the Association was a company-dominated union.

The election was held on July 8, 1937. Out of 1,930 votes cast, the Union received 1,079, the Association 803; 3 ballots were void and 45 challenged. The plant was reopened shortly after the holding of the election.

Pursuant to its agreement the respondent entered into [fol. 139] negotiations with the Union, the first meeting being held June 17, 1937. Numerous conferences between

the parties culminated on August 15, 1937, in the posting of a bulletin on bulletin boards throughout the respondent's plant stating that an "understanding" had been reached concerning enumerated provisions relating to wages, hours, and working conditions.

B. Interference, restraint, and coercion

Unveiled hostility by the respondent's supervisory officials greeted the employees in their attempts to organize. That such an attitude was not unexpected is indicated by the fact that from January to April the activities and meetings of the Union had been carried on in secret.

Five employees testified that Heinrich, superintendent of the Pittsburgh plant, talked to them during April about unions. Heinrich is alleged to have told three of the witnesses that he had been informed they had attended a Union meeting, and to have then pointed out to them the benefits they had received in working for the respondent. In the case of another of the five, Heinrich is alleged to have stated, in addition to pointing out the benefits of working for the company, that the employee would not fare so well if a union came into the plant. Heinrich denies that he made such statements. His unqualified denials of any anti-union activities are not convincing under the facts of this case.

Locke, foreman of the bean building, and Vajentic, a foreman of one division of the bean building, are also charged with expressing sentiment against the Union. Locke is alleged to have stated to Maternick, an employee, that he understood Maternick was "one of those Bolshevists;" to have asked Maternick and Ahel, another employee, what they would "get from a union;" and to have told Ahel that he would be sorry he had joined the "outside" union. Locke's denials, in the light of his other activities set forth below, are likewise unconvincing. Vajentic was not called by the respondent; there is, therefore, no denial of testimony, which seems credible to us, that Vajentic asked Canjar what he was trying to do to the respondent by attending a Union meeting the night before, that the company had always been good to him and that if the Union came in he would lose his insurance and social security; that [fol. 140] Vajentic told Maternick that if the Union came in, Howard Heinz would shut down the plant rather than deal

with it; and that Vajentic told Vilha, another employee, that if a union was organized in the plant it might cause all of them to lose their jobs.

Hayes, also a foreman, is alleged to have told Frank Koontz, "Don't be like that dumb brother of yours. If anyone asks you to join the outside union, tell them to go to hell;" to have told John Koontz that the union president was getting "$5 a head" for every member signed up in the Union; and to have asked John Warnick, what he thought of his "dumb buddy" who "after having 13 years of service with the H. J. Heinz Company, he turns around and signs up with an outside union" which "is led by a foreigner that hasn't even got a citizen's paper." Hayes' denials of having made each and everyone of the numerous statements are particularly unconvincing.

Brooks, a foreman, and Schirer and Fisher, foreladies, were not called to deny that they had engaged in similar anti-union activities attributed to them by witnesses at the hearing.

The above instances are cited merely as examples of the respondent's interference, restraint, and coercion of employees in their rights to self-organization. Many other instances, even though denied, are clearly proved by the testimony.

We find that the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. Domination and interference with the formation and administration of the Association

During the time this coercion and interference with the right of employees to self-organization was being exercised, the Heinz Employees' Association first appeared in the plant. Bennett, a mechanic in the can department, testified that he conceived the idea in January, 1937, of forming an "inside" organization for the purpose of keeping any other organization out of the plant and to prevent strikes. Bennett testified that at that time he solicited and secured aid in forming the organization from Frank Kirschner, William Ubrey, and John Ubrey, all machinists, and Eddie Grznkowski,* an inspector and repairman. We do not

* Known as Eddie Kranz.

[fol. 141] consider this testimony wholly convincing even though the other four named as cooriginators testified to the same facts, since the record does not indicate a single instance in which any other person was solicited to join the Association prior to April, 1937.

Beginning in April and continuing in May, petitions, in which the signers authorized the Association to act as collective bargaining agent, were circulated among the employees while at work in the plant. The five employees named as the originators of the organization were active in circulating the petitions. Other employees, many of them group leaders or departmental timekeepers, were also active in soliciting signatures to the petitions.

It is not contended that departmental timekeepers occupy supervisory positions. Much testimony was adduced by the Union and the respondent as to the character of the position of group leaders, the Union contending that they are supervisory employees, the respondent that they are not. The evidence shows that each main division of the Pittsburgh plant has a foreman. Each subdivision, in turn, has foremen and foreladies who are directly responsible to the foremen of the main divisions. Groups of employees in each subdivision are further supervised by group leaders. All foremen and foreladies receive a salary and devote themselves exclusively to supervisory work. Group leaders are paid hourly, do not attend foremen's meetings, and work with the employees whose work they supervise. The respondent contends that group leaders are not supervisory employees because they have no authority to hire or discharge employees. This criterion is not conclusive in the determination of the supervisory character of the position of group leaders under the system of operation employed. The record indicates that all hiring in the Pittsburgh plant is done through the employment office and that even foremen of main divisions cannot discharge an employee without authority, in each instance, from the superintendent. More significant is the testimony of employees who state that group leaders are their "bosses" because they give orders which must be obeyed. Certain group leaders testified that the foremen held them responsible for the work performed by their groups. Significant also is the testimony of Greenier, a group leader who was active [fol. 142] in soliciting members for the Association, who

testified that when Frank Koontz asked Greenier to join the Union, Greenier "ordered" him back on the conveyor. Heinrich, likewise, admitted the supervisory character of group leaders by testifying:

"Offhand I would say (there are) probably 250 that you would call supervisors in a sense . . . just the foremen and foreladies are salaried, the others are all hourly workers.

Moreover, it is unnecessary for us to decide whether or not group leaders occupied positions of such supervisory character that their actions alone would bind the respondent. There is evidence in the record of illegal activities by employees whose supervisory capacity is not denied.

It is not denied by the foremen and foreladies of some departments that they knew of the activities carried on during working hours in behalf of the Association. In other departments, whether or not knowledge is denied by supervisors, it is apparent that they could not have been unaware of what was being done. The activities of Armstrong, an employee, in addition to showing the participation of one foreman in the affairs of the association, may be cited as an example of how openly these activities were carried on. On April 27, Brooks, foreman of the main division in which Armstrong worked, assembled 40 or 50 employees in the division and addressed them for 20 to 30 minutes during working hours. Brooks announced that he was not speaking for the company, that his remarks represented his personal opinion. He pointed out the amount of money collected by the American Federation of Labor and the salary paid to President Green and stated that the employees should not join that type of union. Brooks also stated, "Now, I am not trying to influence you in any way, but why not have a union of our own here?"

The following morning Brooks sent for Armstrong and asked Armstrong what he thought of unions. Armstrong replied that he wasn't in favor of them, and Brooks expressed pleasure at his attitude. In the afternoon of the same day, Grznkowski, previously mentioned as one of the five originators of the Association, gave Armstrong [fol. 143] several petitions and directed him to begin get-

ting signatures immediately. When Armstrong protested that he was supposed to be working, Grznkowski replied that his foreman would let him go. Armstrong on that day and for about 2 to 3 hours per day for an entire week circulated throughout the entire building getting signatures. Armstrong's work required his presence constantly at a machine. He testified that not only did Mozeyka, his immediate foreman, not object but that Mozeyka placed another employee on the machine to substitute for Armstrong while he was securing the signatures. Neither Armstrong nor other employees engaged in soliciting members for the Association were docked for the time spent in these activities.

On the second day during which Armstrong solicited members for the Association, he was stopped in another department by a foreman who asked whether Brooks knew what he was doing. Armstrong then went to Brooks and told him that he was getting signatures to the petition. Brooks examined the petitions and remarked, "Yes, I have seen them. All right." Three or 4 days later Brooks called Armstrong into his office, and stated, "This thing isn't moving fast enough. The names aren't coming in fast enough. Why don't you get some help? For instance, get Andy Hubstenberger from the first floor and Louis Beniquista and Andy Porack from the seventh floor." Armstrong, who testified that he considered he had been given a promotion by being requested to secure signatures to the petition, secured the aid of two of the three employees suggested. The respondent failed to call Brooks or Mozeyka to the stand, and Armstrong's testimony is undenied on the record.

Locke, a foreman previously mentioned as having expressed antipathy to the Union, likewise assembled the employees in his department. Locke read them a prepared statement in which he stated that the petitions which most of them had signed the day before expressing their willingness to join the Association had been stolen. Locke stated that he was speaking "as an individual of H. J. Heinz Company;" that he had heard many rumors, among others, that if the Association gained a majority, wages would be cut; that such a statement was untrue, wages depended largely "on how profitable business was." Locke [fol. 144] also stated that he considered it only fair that

the employees "should all be given the opportunity to show that you want to join the Association of Heinz Employees," and announced that a petition would be placed on the timekeeper's desk "where all of you who signed before may now sign again in perfect confidence that you will be protected in your right to express your opinions as you see fit" and where "anyone of you who did not sign may also sign at this time if you wish." Locke's sentiment was not obscured by his statements that the employees' wishes "will be protected, whether you want to join the Heins Association or the A. F. of L., some of the men are interested in" and "if there are any who wish to join the A. F. of L., I am sure there are men here who will take care of them and see that they get signed up." Locke made no effort to secure someone to take signatures for Union membership, but he did stand near the timekeeper's desk while the Association's petition was being signed.

Andy Vajentic, foreman in the bean baking department, was not called to deny that he solicited Belovitch, Martof, and Marinc to join the Association. Dominic Vajentic, a brother of the foreman, does not deny that he openly solicited signatures to the petitions in Andy's department.

Maurice Shindler is a highly skilled machine designer, who although not shown to have any supervisory power, occupies a position of such character as entitles him to eat in the cafeteria reserved for officers and foremen. Shindler testified that on the evening of May 20 while he was having dinner in the cafeteria, Hayes, general foreman, came in and sat down beside him. Shortly afterwards Palivoda and Skertish, and two other foremen whose names he did not know, came in and joined Hayes. Shindler testified:

"After being seated and greetings exchanged, Hayes said to Palivoda 'How did you make out?' Palivoda began to enumerate that he spoke to a certain girl, and she informed him that she had signed up with the outside union, wouldn't have anything to do with the inside union. He talked to her, he said, the best he could. And he said, 'Hayes, do you remember how she came and begged for a job, and the father also implores us to put her on, and now she shows her gratitude by joining the outside union.' [fol. 145] And the whole tone of the conversation was that Mary this or Molly this, 'I saw her. She has joined the

outside union. 'I have talked to her. I did the best I could. I couldn't do anything. Others I have neutralized. Others have paid their initiation fee.' And during the course of the conversation he mentioned that he had seen all of the 26 names on the list that Hayes gave him and had talked to them."

"Mr. Skertish also reported in the same vein."

Hayes, Palivoda, and Skertish each denied that this conversation took place. Shindler seems a very credible witness, however. Palivoda is unconvincing. Skertish testified that he couldn't have made such a report, "because Mr. Heinrich, the superintendent, wanted me not to talk unions or to have anything to do with them." We consider Hayes' denial, viewed in the light of his consistent denials that he engaged in any of the activities to which numerous witnesses testified, unconvincing.

It is clearly established that Hargraves, a salaried employee who is described as the respondent's "good will man;" was active in the Association during this time, although he resigned from membership when the Association's constitution and bylaws, which exclude salaried employees from membership, were adopted. Shindler also testified that he overheard Hargraves asking one of the stenographers in the respondent's office to take the minutes at an Association meeting, and that when she refused, Hargraves stated he had absolute proof that the Union "was organized by Croation Communists who are getting orders from Moscow." Hargraves was not called as a witness by the respondent.

Although there is additional evidence, the testimony discussed is sufficient to show that the respondent through its supervisory officials has dominated and interfered with the formation and administration of the Association and contributed support to it; and we so conclude.

Counsel for the respondent took the position at the hearing that even if such fact were established, "It all happened in April and May, and whatever damage, if any, was done, was all cured by an election." We do not so view the situation. Bennett, president of the Association, [fol. 146] testified that at the time of the hearing the Association had between 1,050 and 1,100 dues-paying members; that since the election the Association had existed for the

purpose of carying on social functions; but as to the future "you never can tell."

Whether the continuance of the Association and its apparent gain in members since the election are due to the impetus given to it by the respondent during April and May, or to the fact that it is continuing to receive aid from the respondent, we do not know. As long as the Association continues, it remains the respondent's weapon against its employees' free exercise of their right to self-organization and to join a union of their own choosing.

We find that the respondent has dominated and interfered with the formation and administration of the Association and contributed support to it; and that by these activities the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

D. The refusal to bargain collectively.

1. The appropriate unit.

The complaint alleges that all of the employees at the Pittsburgh plant, except foremen, assistant foremen, salaried employees, office help, and outside truck drivers, constitute a unit appropriate for the purposes of collective bargaining. This is the unit which, by agreement of the respondent, the Union, and the Association, was used as the basis of the consent election held on June 8, 1937. Supervisory, clerical or office help, and salaried employees are normally excluded in an industrial unit; their exclusion, therefore, needs no further comment. Outside truck drivers were excluded on the grounds that they are members of Local 249 of the International Brotherhood of Teamsters, Chauffers, Stablemen and Helpers of America, likewise affiliated with the American Federation of Labor, and have dealt with the respondent as a separate unit. We see no objection to their exclusion for these reasons.

We find that all of the employees at the Pittsburgh plant of the respondent, except foremen, assistant foremen, salaried employees, office help, and outside truck drivers, constitute a unit appropriate for the purposes of collective [fol. 147] bargaining, and that such a unit insures to the respondent's employees the full benefit of their rights to

self-organization and otherwise effectuates the policies of the Act.

2. Representation by the union of a majority in the appropriate unit.

As previously stated, the Union received 1,079 votes out of a total of 1,930 ballots cast in the consent election held on June 8, 1937, by the Regional Director for the Sixth Region. There is no evidence in the record as to the desires of a majority of the employees since that time, except the statement that at the time of the hearing the Association had approximately 1,050 to 1,100 dues-paying members. Since, by the statements of the Association's president, the Association has existed since the election solely for social purposes, such membership is not inconsistent with the desire of a majority of the employees to have the Union represent them for the purpose of collective bargaining. Moreover, we cannot consider membership in the Association as a free will act because of our finding that the Association was dominated by the favoritism shown to it by the respondent. In the absence of evidence to the contrary, there is a presumption that a majority of the employees continue to desire the Union to represent them.**

We find that on June 8, and thereafter, a majority of the employees in the unit which we have found appropriate had designated and selected the Union as their collective bargaining agent and that, pursuant to Section 9(a) of the Act, the Union was the exclusive representative of the employees in the appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The Refusal to Bargain.

As previously indicated, negotiations between the Union and the respondent looking to an agreement concerning wages, hours, and conditions of employment began on June 17, 1937. At the six or seven meetings which were held [fol. 148] between June 17 and 28, the respondent was generally represented by Riley, Robt. G. Shinabarger, a

** Matter of United States Stamping Company and Enamel Workers Union, No. 18630, 5 N. L. R. B. No. 29.

director who is assistant to S. Mueller, one of the vice presidents of the respondent,. and Donald W. Ebert, an attorney. At these conferences the subject matter of discussion between the groups was largely confined to the provisions of a proposed contract which had been submitted by the Union to the respondent on June 17. The contract was in the form of a bilateral agreement, the first paragraph of which provided that it was an agreement between the respondent and the Union, and provided for the signatures of both parties. The proposed contract also provided that the agreement should be in effect for a period of time, the exact time being left blank.

During the negotiations each paragraph of the contract submitted by the Union on June 17 was discussed, Riley and Shinabarger indicating in some instances that the proposals would not be agreed to by the respondent, and in other instances that the respondent was unwilling to grant the demands of the Union in their entirety. At no time during this period did Riley or Shinabarger indicate to the Union committee that the respondent was unwilling to enter into a written agreement which would be in effect for a period of time, though they unqualifiedly stated that other provisions of the proposed agreement, such as the closed shop, would not be accepted by the respondent.

The one issue on which the parties were furthest apart during these discussions related to wage increases. The Union had demanded a 20 per cent increase, with certain minima for men and for women. The respondent had offered an increase of 10 per cent, with lower minima. Although the proposed contract submitted by the Union on May 21, had only asked for a 10 per cent increase, the Union felt that a larger increase was justified in view of the events that had transpired since May 21, the most important of which was that the respondent had agreed with the Association to a 10 per cent increase on June 1, which increase, however, had never been put into effect. The position of Riley and Shinabarger from the beginning of the negotiations was that the respondent would not agree to any increase in excess of 10 per cent.

At the meeting of June 26, neither the Union nor the [fol. 149] respondent having receded from their respective positions in respect to wage increases, Wilner, the attorney for the Union, proposed that some higher official of

the respondent be present at the next meeting. The proposal was the outcome of statements by Riley and Shinabarger that their actions were subject to the approval of the other directors of the respondent.

In accordance with the suggestion, Hugh C. Anderson, a vice president of the respondent, attended the meeting of June 28. Anderson sat throughout the meeting, which lasted about one and a half hours, without speaking. Wilner then asked Anderson for a statement. Anderson replied that nothing had been stated which had not been previously discussed according to the reports which he had received; that the directors had full confidence in Riley and Shinabarger; that the respondent's offer was a 10 per cent increase and that the Union could "take it or leave it." Wilner and other members of the Union who were present testified that Anderson, in addition, stated that Riley and Shinabarger had full authority to act for the respondent. Although this is denied by the respondent's witnesses, we believe that events which followed reasonably indicate such authority.

The Union, feeling that an impasse had been reached, again solicited the aid of State and Federal mediators. The respondent refused the suggestion of the mediators that the matter be submitted to mediation but agreed to meet again with the Union representatives on July 1. Again the respondent failed to offer any increase in excess of its original counter-proposal. The Union representatives left this meeting with the intention of submitting the respondent's proposals concerning wage increases, hours, and vacations to the Union membership at a meeting to be held that night. Shortly after the representatives of the Union had left this conference, Riley sent for Kracik, the international representative of the Amalgamated. Kracik returned to the plant, where Riley bluntly informed him that the respondent did not intend to enter into any signed agreement with the Union.

The Union membership agreed at the meeting that night to accept the respondent's counter-proposals, which, pursuant to previous agreement, went into effect in the plant on the following day, but as of July 1. On the following [fol. 150] day, July 2, at a meeting between representatives of the respondent and the Union, Wilner voiced violent objection to the respondent's position that it would

not enter into a signed agreement with the Union. Riley stated that it was the policy of the respondent not to enter into signed agreements with unions and that the respondent did not consider the Act required it to do so. It was finally agreed at this meeting that Wilner and Ebbert should incorporate the terms on which an understanding had been reached in a memorandum.

Some time before July 14, Ebbert prepared such a memorandum, and submitted it to Wilner, who made certain corrections. On July 14, Riley, Shinabarger, and Ebbert, representing the respondent, met with Wilner and other representatives of the Union to discuss the draft which Wilner and Ebbert had agreed correctly expressed the terms on which an understanding had been reached. The committees made cartain other changes and all present agreed that Ebbert should prepare a final draft and that this draft should be posted on the respondent's bulletin boards on the following day. It was also agreed that a copy should be sent by Ebbert to Wilner. While Riley denies that such arrangements had been made, Wilner received a copy of a corrected memorandum from Ebbert on the following day. This fact clearly indicates that Ebbert likewise understood at the meeting of July 14, that Riley and Shinabarger had agreed to the form of the memorandum and establishes the fact that no indication had been given that their agreement was subject to further action by other directors of the respondent. The memorandum received by Wilner is dated July 15, and entitled "Notice to all employees." The first paragraph states:

"Following the recent election held under the supervision of the National Labor Relations Board, in which the Canning and Pickle Workers' Local Union No. 325 was selected as the collective bargaining agency for our employees, we have had meetings with a committee from that organization and after several weeks of negotiation, have agreed with them as follows:"

The agreement then set forth certain provisions relating [fol. 151] to wages, working hours, vacations, seniority, adjustment of grievances, discharges, safety and health, and concluded with the provision:

"The wage rates and other matters hereinabove set forth shall remain in effect until further notice."

The copy received by Wilner contained at the end the type written signature of the respondent.

Wilner, upon being notified during the day that the memorandum had not been posted in the plant, called Ebbert for an explanation. Ebbert stated that Anderson had objected to the memorandum and, in addition, felt that it should be submitted to Howard Heinz, president of the respondent, who was then out of the city, before it was posted.

On July 23 or 24, Ebbert informed Wilner that Heinz had seen the memorandum, and wished to rewrite it in its entirety and that no further action could be taken at that time.

On July 29 or 30, Ebbert submitted to Wilner, a bulletin which had been prepared by Heinz. This bulletin differed materially from the one which had been agreed upon on July 15. It was entitled:

"Labor Relations Bulletin, Pittsburgh Factory, H. J. Heinz Company"

The opening paragraph read:

"According to the provisions of the National Labor Relations Act, we have bargained with the certified collective bargaining agency for our employees (not including, however, foremen, assistant foremen, who are paid on a monthly basis, policemen, outside truck drivers, office employees, or factory employees paid on a monthly basis) and the following understanding has been reached:"

In no place in the bulletin was the Union named nor did the signature of the respondent appear at the end. The body of the bulletin constituted a complete rewording of the memorandum of July 14. Material changes had been made, also, in the substantive provisions. The Bulletin eliminated all details concerning the procedure to be followed in the handling of grievances, eliminated the right of the Union to aid in the determination of wage rates for [fol. 152] certain employees excepted from the standard rates, made overtime payable for time worked in excess of 44 hours a week, instead of after 40 hours as stated in the memorandum, provided that overtime rates should not apply to the handling of perishable products, an exception which the memorandum of July 14 stated had not been "agreed" to by the Union, and made rates for beginners

payable for 3 months instead of for 1 month as provided in the memorandum.

On July 31, 1937, Wilner met with Ebbert and Bostwick, attorneys for the respondent. Wilner protested against the procedure which had been followed by the respondent throughout the negotiations and the bulletin as prepared by Heinz in particular. Wilner stated, however, that decision would be up to the Union and that he would refer the bulletin prepared by Heinz to the Union.

The next meeting held between any of the interested parties occurred on August 11. The delay in this instance alone is not attributable to the respondent. Riley, Shinabarger, and Bostwick represented the respondent at this meeting. The representatives of the Union voiced great dissatisfaction with the bulletin on several grounds, particularly the elimination of the name of the Union in the introductory paragraph and elimination of the details concerning the procedure to be followed in the handling of grievances. Representatives of the respondent stated that both changes had been made by Heinz because he wished to reduce the length of the bulletin. Although it was pointed out that the name of the Union was no longer than the phrase "certified collective bargaining agency for our employees," the respondent's representatives refused to agree to the change. In only two material particulars did the respondent's representatives agree to a revision. The payment of overtime for work in excess of 44 hours a week was changed to payment for work in excess of 40 hours, and the name of the Union was put in the paragraph relating to grievances. At the conclusion of the meeting, the representatives of the Union agreed that the bulletin should be posted on the bulletin boards of the respondent. The bulletin was posted by the respondent on August 15. On August 17, Tasker, business agent of the Union, wrote the following letter to Riley:

"This is to advise you that the notice you have posted [fol. 153] on your bill-board does not in our opinion constitute an agreement within the intent of the memorandum of understanding entered into by and between our Union and you on June 4, 1937, nor is it evidence of bona-fide collective bargaining within the meaning of that understanding or the National Labor Relations Act.

"Nevertheless, we realize that the concessions gained for

the employees of the H. J. Heinz Company were the direct results of our efforts and we are anxious to conserve for the Heinz employees the benefits which they so richly deserve and for which we strove so hard.

"We, therefore, do not object to you (sic) posting of the notice but intend to lay this matter before the National Labor Relations Board in order to have that impartial agency determine whether or not you have bargained in good faith and whether you have done what our memorandum of understanding of the 4th of June, 1937, and the law requires of you."

It is plain from the foregoing recital of facts that the respondent has not bargained collectively with the Union within the meaning of Section 8, subdivision (5) of the Act.

In the first place it is not clear that, although an accord on terms was reached, the respondent was willing to embody those terms in an agreement binding upon the parties. The respondent contends that there was such an agreement. The Union in its letter of August 17, apparently thinks that there was not. If there were no such agreement, there was, of course, a violation of Section 8, subdivision (5) within the principles set forth in Matter of St. Joseph Stock Yards Company and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union 159.† However, it is not necessary to decide this matter here, since the respondent did not fulfill its obligation under Section 8, subdivision (5) in two other vital respects.

First, the respondent has failed to recognize the Union, and, assuming an agreement was reached, to agree with the Union as the representative of its employees. In the "Labor Relations Bulletin" posted on August 15, representing the culmination of the negotiations, the respondent [fol. 154] flatly refused to name the Union as the collective bargaining agent or to give it any express credit for the results reached. Riley admitted that the respondent refused to do this for "psychological" reasons. He explained those reasons as, "just a matter of trying to pound some of the boys down a bit," "a tendency to get this wild colt back on the reservation," and that the rights of the minority "should be protected." The attitude of the respondent in this matter is in strong contrast to its attitude towards

†2 N. L. R. B. 39.

the Association. In the bulletin which had been mailed to the employees on June 1, which incorporated the agreement between the Association and the respondent, not only had the name of the Association been used, but, in addition, the name of the five officers and 15 representatives of the Association had been prominently set forth. The difference in the respondent's treatment of the two organizations must be viewed in the light of its antipathy towards the Union, and its use of the Association to prevent self-organization. It clearly wished to impress its employees with the benefits of membership in the Association and to convince them that no benefits had been gained by virtue of membership in the Union.

The respondent's fixed determination not to accord the Union the recognition contemplated by the Act is further evidenced by its own analysis of what it considers its liability under the bulletin of August 15. Officers of the respondent testified that they have been advised and that they believe that the respondent is legally bound by the provisions set forth in the bulletin. Riley, however, admitted that the "agreement" which exists is between the respondent and its employees, and not between the respondent and the Union. Assuming that an "agreement" with someone had been reached, the failure of the respondent to make or to acknowledge that it had made an "agreement" with the Union, although the Union was the party with whom it was obligated under the Act to bargain collectively, was a failure to recognize and deal with the Union as the collective bargaining agent of its employees.

Secondly, the respondent refused to enter into a written signed agreement. The respondent does not deny that it, in the first instance, refused to enter into a written agreement. In fact, officials of the respondent testified that it was the respondent's fixed policy not to enter into written [fol. 155] signed contracts with any labor organization.

The respondent has sought to show, however, through an article which was published in the Catholic Radical Alliance on July 8, 1937, that the Union was also unwilling to enter into a written agreement. The author of the article was Father Rice, a Catholic priest who had accompanied the Union committee in some of its meetings with the respondent prior to July 1. In the article Father Rice stated that the terms offered by the respondent had been submitted to the employees at a mass meeting the week before

(apparently referred to the meeting on the night of July 1), and that the employees, wanting peace, agreed to accept the terms offered but would not agree to sign a contract for a term. It does not appear from the article, however, that the Union did more than take the position that it was unwilling to agree to be bound by the arrangements which the Company had offered for any specific length of time. In any event, as we have seen above, on the following day Wilner, authorized representative of the Union, objected strenuously to the respondent's refusal to enter into a signed written agreement. We conclude, therefore, that the Union never abandoned either its demand or its desire for a written signed agreement providing full recognition of the Union and embodying an understanding reached as a result of genuine collective bargaining.

Beyond the definite refusal to recognize the Union or to make a written signed agreement with it as hereinabove discussed, we consider that the respondent's actions throughout the course of negotiations indicate that it was not acting in good faith. Officials of the respondent testified that it had always been the policy of the Company not to enter into written agreements with labor organizations. Knowing this, the respondent nevertheless failed to disclose this policy to the Union during the negotiations which settled the strike. During its early negotiations with the Union, the respondent not only failed to notify the Union that it would not enter into a signed agreement, but made no objection to the form of the Union agreement, thus affirmatively giving the Union the impression that it had no objections to entering into a written agreement.

Furthermore, it is apparent that no substantial conces- [fol. 156] sions relating to wages and hours were granted to the employees after negotiations with the Union, which had not already been acceded to by the respondent at the time of its negotiations with the company-dominated Association. In at least one important provision, the Association had gained better terms than the Union.‡ The

‡ All employees called out for work were guaranteed at least 4 hours continuous work under the agreement with the Association; under the agreement with the Union any employees instructed to report for work and who was sent home because work was not available received a minimum of 2 hour's pay.

attitude of the respondent during the negotiations was that expressed by Anderson in the meeting of June 28, namely, that the respondent offered certain terms which the Union could "take or leave."

The actions of Anderson in refusing to allow the posting of the memorandum of July 14 and of Heinz in rewriting that memorandum, indicate, at the least, the employment of dilatory tactics designed to further discredit the Union.

Finally, we do not consider that the Union by continuing negotiations beyond July 1, 1937, and by agreeing to the posting of the bulletin of August 15, at any time indicated that the procedure of posting a bulletin was acceptable as a substitute for a written agreement signed by the parties. By its letter of August 17, 1937, the Union specifically notified the respondent that such a procedure was not acceptable. The Union has not, therefore, waived its right to insist before this Board that the respondent has failed to bargain collectively in accordance with the provisions of the Act.

We, therefore, conclude that the respondent has failed and refused to bargain collectively with the representatives of its employees within the meaning of Section 8, subdivision (5) of the Act; and that by such failure and refusal the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

We find that the activities of the respondent set forth in Section III above, occurring in connection with the opera- [fol. 157] tions of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and with foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Since we have found that the respondent dominated and interfered in the formation and administration of the Association and contributed support to it and since the Association, so long as it continues, constitutes a threat to the rights of self-organization of these employees, the policies

of the Act will not be effectuated unless the Association is disestablished. We will, accordingly, order the respondent to disestablish the Association immediately as the representative of any of its employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment.

Since the respondent has failed to bargain collectively in good faith with the Union as the representative of its employees, we will order the respondent, upon request, to enter into collective bargaining with the Union for the purpose of reaching an agreement with the Union covering wages, hours, and working conditions; and, if any understanding is reached on any of such matters, and the respondent is requested to do so by the Union, to embody such understanding in a written signed agreement.

Upon the basis of the above proposed findings of fact, and upon the entire record in the case, the Board makes the following:

PROPOSED CONCLUSIONS OF LAW

1. Canning and Pickle Workers, Local Union No. 325 and Heinz Employees' Association are labor organizations within the meaning of Section 2, subdivision (5) of the Act.

2. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of [fol. 158] Section 8, subdivision (1) of the Act.

3. The respondent, by dominating and interfering with the formation and administration of Heinz Employees' Association, and by contributing support to the said organization, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (2) of the Act.

4. All the employees at the Pittsburgh plant of the respondent, except foremen, assistant foremen, salaried employees, office help, and outside truck drivers, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9(b) of the Act.

5. Canning and Pickle Workers, Local Union No. 325 was on June 8, 1937, and at all times thereafter has been the

exclusive representative of all employees in such unit for the purposes of collective bargaining, within the meaning of Section 9(a) of the Act.

6. The respondent, by refusing to bargain collectively with Canning and Pickle Workers, Local Union No. 325 as the exclusive representative of the employees in the aforesaid unit, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

PROPOSED ORDER

Upon the basis of the findings of fact and conclusions of law and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, H. J. Heinz Company, Pittsburgh, Pennsylvania, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From in any manner dominating or interfering with the administration of the Heinz Employees' Association, or with the formation or administration of any other labor organization of its employees, and from contributing support to the Heinz Employees' Association, or any other labor organization of its employees;

(b) From refusing to bargain collectively with Canning and Pickle Workers, Local Union No. 325 as the exclusive representative of all the employees at the Pittsburgh plant, [fol. 159] except foremen, assistant foremen, salaried employees, office help, and outside truck drivers;

(c) From in any other manner interferring with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from the Heinz Employees' Association as the representative of any of its employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment, and completely disestablish Heinz Employees' Association as such representative;

(b) Upon request, bargain collectively with Canning and Pickle Workers, Local Union No. 325, as the exclusive representative of all the employees at the Pittsburgh plant, except foremen, assistant foremen, salaried employees, office help, and outside truck drivers, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached on any of such matters, embody said understanding in a written signed agreement for a definite term to be agreed upon, if requested to do so by Canning and Pickle Workers, Local Union No. 325;

(c) Post notices immediately on the bulletin boards in the Pittsburgh plant stating: (1) that the respondent will cease and desist as aforesaid; (2) that the Heinz Employees' Association is disestablished as the representative of any of its employees for the purpose of deal- with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or any other conditions of employment, and that the respondent will refrain from any recognition thereof; and (3) that, upon request, the respondent will bargain collectively with the Canning and Pickle Workers, Local Union No. 325 as the exclusive representative of all the employees in the unit which we have [fol. 160] found appropriate; and keep said notices posted for a period of at least thirty (30) consecutive days from the date of posting;

(d) Notify the Regional Director for the Sixth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith.

Dated at Washington, D. C., July 13, 1938.

[fol. 161] BEFORE NATIONAL LABOR RELATIONS BOARD

AFFIDAVIT AS TO SERVICE

Case No. C-304—Filed July 13, 1938

DISTRICT OF COLUMBIA, ss:

I, Owen C. Fetters, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 13th day of July, 1938, I mailed, postpaid, bearing Government frank, by registered mail, a copy of the Order, Proposed Findings of Fact, Conclusions of Law and Proposed Order to the following named persons, addressed to them at the following addresses:

Canning and Pickle Workers, Local Union No. 325, 922 E. Ohio Street, N. S., Pittsburgh, Pa.

Thorp, Bostwick, Reed & Armstrong, 2812 Grant Building, Pittsburgh, Pa.

Heinz Employees Assn., c/o I. C. Bennett, President, R. F. D. No. 6, Box 736-H, Mt. Oliver Post Office, Pittsburgh, Pa.

Edmund M. Toland, Esq., Investment Bldg., Washington, D. C.

Owen C. Fetters.

Subscribed and sworn to before me this 13th day of July, 1938. Harold G. Wilson, Notary Public, District of Columbia. My commission expires May 15, 1941. (Seal.)

[fol. 162] BEFORE NATIONAL LABOR RELATIONS BOARD

Case No. C-304—(Filed Aug. 3, 1938)

In the matter of H. J. HEINZ COMPANY and Canning and Pickle Workers, Local Union No. 325, affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America, American Federation of Labor

EXCEPTIONS TO REPORT OF THE NATIONAL LABOR RELATIONS BOARD

Now comes the respondent, H. J. Heinz Company, by its attorneys, and saving and reserving unto itself the right to file such further objections and exceptions as it may see

fit, objects and excepts to the report of the National Labor Relations Board (a copy of which was served upon the respondent on July 14, 1938), to the Proposed Findings, Proposed Conclusions of Law, and Proposed Order therein set forth, to the failure of the Board to make certain findings of fact, to the proposed ruling of said Board on the respondent's motion to dismiss and to the proposed affirmance by said Board of rulings of the Trial Examiner upon certain objections and motions made by the respondent during the hearing as follows:

To the Report

1. The respondent objects and excepts to the report in its entirety for the following reasons, among others:

(a) The National Labor Relations Board issued its Decision and Order, including findings of fact and conclusions of law in the above captioned case on April 9, 1938, and the Board, after the respondent filed its petition to review and set aside said Decision and Order in the Circuit Court of Appeals for the Third Circuit, set aside its said Order and findings for the purpose of further proceedings before said Board, and, after a delay of two months issued said report dated July 13, 1938.

(b) Said report containing Proposed Findings of Fact, [fol. 163] Proposed Conclusions of Law and Proposed Order in the above captioned case is, with a few immaterial exceptions, identical with the aforesaid Decision and Order dated April 9, 1938, and if it is the result of further proceedings before the Board in said case, the respondent was not advised thereof and was permitted to take no part therein.

(c) The report is contrary to the evidence adduced at the hearing.

(d) The report is contrary to the law.

(e) The National Labor Relations Board was not qualified or competent to issue the report for the reason that the Board prevented its Trial Examiner from issuing an intermediate report.

(f) The Proposed Findings of Fact are not in proper form and the respondent is prevented thereby from ex-

cepting thereto because they are so mingled with statements of the National Labor Relations Board's opinions on and reactions to the testimony of the witnesses, quotations from the testimony, and the reasoning by which said Board reached its conclusions.

(g). Many of the Proposed Findings of Fact lack definiteness and specification so that the respondent is unable with certainty to determine what are the Proposed Findings of Fact.

(h) The form of the Proposed Findings of Fact is such that the respondent is thereby denied a full and fair hearing in that it is obstructed by said National Labor Relations Board in its exercise of its right to file its exceptions to the Proposed Findings of Fact.

2. The respondent objects and excepts to the preliminary statement in said report that:

"Full opportunity to be heard, to examine and cross-examine witnesses and introduce evidence bearing on the issues was afforded to all parties."

To the Proposed Findings of Fact

3. Respondent excepts to the Proposed Finding, page 5, that:

[fol. 164] "No method of determining this fact was decided upon since the Union was unwilling to reveal the identity of its members."

4. The respondent excepts to the Proposed Finding, page 6, that on the night of May 24th:

"Apparently dissatisfied with the prospective delay in recognition, the Union voted to strike; the strike being put into effect immediately."

5. The respondent excepts to the Proposed Finding, page 6, that:

"The Union indicated its willingness to have an election in which the employees would choose whether or not they wished the Union to represent them, but this sug-

gestion was not acceptable to the respondent or to the Association."

6. The respondent excepts to the Proposed Finding, page 8, that:

"Unveiled hostility by the respondent's supervisory officials greeted the employees in their attempts to organize."

7. The respondent excepts to the Proposed Finding, page 8, that:

"That such an attitude was not unexpected is indicated by the fact that from January to April the activities and meetings of the Union had been carried on in secret."

8. The respondent excepts to the Proposed Finding, page 8, that:

"Five employees testified that Heinrich, superintendent of the Pittsburgh plant, talked to them during April about unions. Heinrich is alleged to have told three of the witnesses that he had been informed they had attended a union meeting, and to have pointed out to them the benefits they had received by working for the respondent. In the case of another of the five, Heinrich is alleged to have stated, in addition to pointing out the benefits of working for the company, that the employee would not fare so well if a [fol. 165] union came into the plant. Heinrich denies that he made such statements. His unqualified denials of any anti-union activities are not convincing under the facts of this case."

9. The respondent excepts to the Proposed Finding, page 8, that:

"Locke, foreman of the Bean building, and Vajentic, a foreman of one division of the Bean building, are also charged with expressing sentiment against the union. Locke is alleged to have stated to Maternick, an employee, that he understood Maternick was 'one of those Bolshevists;' to have asked Maternick and Ahel, another employee, what they would 'get from a union;' and to have told Ahel that he would be sorry he had joined the outside union.

Locke's denials, in the light of his other activities set forth below, are likewise unconvincing."

10. The respondent excepts to the Proposed Finding, pages 8 and 9, that:

"Vajentic was not called by the respondent; there is, therefore, no denial of testimony, which seems credible to us, that Vajentic asked Canjar what he was trying to do to the respondent by attending a Union meeting the night before, that the company had always been good to him and that if the Union came in he would lose his insurance and social security; that Vajentic told Maternick that if the Union came in, Howard Heinz would shut down the plant rather than deal with it; and that Vajentic told Vilha, another employee, that if a union was organized in the plant it might cause all of them to lose their jobs."

11. The respondent excepts to the Proposed Finding, page 9, that:

"Hayes, also a foreman, is alleged to have told Frank Koontz 'Don't be like that dumb brother of yours. If anyone asks you to join the outside union, tell them to go to hell;' to have told John Koontz that the union president was getting '$5.00 a head' for every member signed up in the Union; and to have asked John Warnick, what he thought of his 'dumb buddy' who 'after having 13 years [fol. 166] of service with the H. J. Heinz Company, he turns around and signs up with an outside union' which 'is led by a foreigner that hasn't even got a citizen's paper.' Hayes' denials of having made each and every one of the numerous statements are particularly unconvincing."

12. The respondent excepts to the Proposed Finding, page 9, that:

"Brooks, a foreman, and Schirer and Fisher, foreladies, were not called to deny that they had engaged in similar anti-union activities attributed to them by witnesses at the hearing."

13. The respondent excepts to the Proposed Finding, page 9, that:

"The above instances are cited merely as examples of the respondent's interference, restraint, and coercion of

employees in their rights to self-organization. Many other instances, even though denied, are clearly proved by the testimony."

14. The respondent excepts to the Proposed Finding, page 9, that:

"We find that the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

15. The respondent excepts to the Proposed Finding, pages 9 and 10, that:

"During the time this coercion and interference with the rights of employees to self-organization was being exercised, the Heinz Employees' Association first appeared in the plant. Bennett, a mechanic in the can department, testified that he conceived the idea in January, 1937, of forming an 'inside organization for the purpose of keeping any other organization out of the plant and to prevent strikes.' Bennett testified that at that time he solicited and secured aid in forming the organization from Frank Kirschner, William Ubrey, and John Ubrey, all machinists, and Eddie Grznkowski, an inspector and repairman. We do not consider this testimony wholly convincing even though the other four named as cooriginators testified to the same [fol. 167] facts, since the record does not indicate a single instance in which any other person was solicited to join the Association prior to April, 1937."

16. The respondent excepts to the Proposed Finding, page 10, that:

"Other employees, many of them group leaders or departmental timekeepers, were also active in soliciting signatures to the petitions."

17. The respondent excepts to the proposed Finding, page 11, that:

"More significant is the testimony of employees who state that group leaders are their 'bosses' because they give orders which must be obeyed. Certain groups leaders testified that the foremen held them responsible for the work performed by their groups."

18. The respondent excepts to the Proposed Finding, page 11, that:

"Significant also is the testimony of Greenier, a group leader who was active in soliciting members for the Association, who testified that when Frank Koontz asked Greenier to join the union Greenier 'ordered' him back on the conveyor."

19. The respondent excepts to the Proposed Finding, page 11, that:

"Heinrich, likewise, admitted the supervisory character of group leaders by testifying:

'Offhand I would say (there are) probably 250 that you would call supervisors in a sense * * * just the foremen and foreladies are salaried; the others are all hourly workers.'"

20. The respondent excepts to the Proposed Finding, page 11, that:

"Moreover, it is unnecessary for us to decide whether or not group leaders occupied positions of such supervisory character that their actions alone would bind the respondent. [fol. 168] There is evidence in the record of illegal activities by employees whose supervisory capacity is not denied."

21. The respondent excepts to the Proposed Finding, page 11, that:

"It is not denied by the foreman and foreladies of some departments that they knew of the activities carried on during working hours in behalf of the Association."

22. The respondent excepts to the Proposed Finding, page 11, that:

"In other departments, whether or not knowledge is denied by supervisors, it is apparent that they could not have been unaware of what was being done."

23. The respondent excepts to the Proposed Finding, page 11 and 12, that:

"The activities of Armstrong, an employee, in addition to showing the participation of one foreman in the affairs of

the Association, may be cited as an example of how openly these activities were carried on."

24. The respondent excepts to the Proposed Finding, page 12, that:

"In the afternoon of the same day, Grznkowski, previously mentioned as one of the five orginators of the Association, gave Armstrong several petitions and directed him to begin getting signatures immediately. When Armstrong protested that he was supposed to be working, Grznkowski replied that his foreman would let him go."

25. The respondent excepts to the Proposed Finding, page 12, that:

"Armstrong on that day and for about 2 or 3 hours per day for an entire week circulated throughout the entire building getting signatures."

26. The respondent excepts to the Proposed Finding, pages 13 and 14, that:

"Locke's sentiment was not obscured by his statements [fol. 169] that the employees' wishes 'will be protected, whether you want to join the Heinz Association or the A. F. of L., some of the men are interested in' and 'if there are any who wish to join the A. F. of L., I am sure there are men here who will take care of them and see that they get signed up.'"

27. The respondent excepts to the Proposed Finding, page 14, that:

"Locke made no effort to secure some one to take signatures for the Union membership, but he did stand near the timekeeper's desk while the Association's petition was being signed."

28. The respondent excepts to the Proposed Finding, page 14, that:

"Dominic Vajentic, a brother of the foreman, does not deny that he openly solicited signatures to the petitions in Andy's department."

29. The respondent excepts to the Proposed Finding, pages 14 and 15, that:

"Maurice Shindler is a highly skilled machine designer who, although not shown to have any supervisory power, occupies a position of such character as to entitle him to eat in the cafeteria reserved for officers and foremen. Shindler testified that on the evening of May 20, while he was having dinner in the cafeteria, Hayes, general foreman, came in and sat down beside him. Shortly afterwards Palivoda and Skertish, and two other foremen whose names he did not know, came in and joined Hayes. Shindler testified:

'After being seated and greetings exchanged, Hayes said to Palivoda "How do you make out?" Palivoda began to enumerate that he spoke to a certain girl, and she informed him that she had signed up with the outside union, wouldn't have anything to do with the inside union. He talked to her, he said, the best he could. And he said, "Hayes, do you remember how she came and begged for a job, and the father also implored us to put her on, and now she shows her gratitude by joining the outside union." And [fol. 170] the whole tone of the conversation was that Mary this or Molly this, "I saw her. She has joined the outside union. I have talked to her. I did the best I could. I couldn't do anything. Others I have neutralized. Others have paid their initiation fee." And during the course of the conversation he mentioned that he had seen all of the 26 names on the list that Hayes gave him and had talked to them.

'Mr. Skertish also reported in the same vein.' "

30. The respondent excepts to the Proposed Finding, page 15, that:

"Hayes, Palivoda, and Skertish each denied that this conversation took place. Shindler seems a very credible witness, however."

31. The respondent excepts to the Proposed Finding, page 15, that:

"Palivoda is unconvincing."

32. The respondent excepts to the Proposed Finding, page 15, that:

"Skertish testified he couldn't have made such a report, 'because Mr. Heinrich, the superintendent, wanted me not to talk unions or to have anything to do with them.' "

33. The respondent excepts to the Proposed Finding, page 15, that:

"We consider Hayes' denial, viewed in the light of his consistent denials that he engaged in any of the activities to which numerous witnesses testified, unconvincing."

34. The respondent excepts to the Proposed Finding, page 15, that:

"Althought there is additional evidence, the testimony discussed is sufficient to show that the respondent through its supervisory officials has dominated and interfered with the formation and administration of the Association and contributed support to it; and we so conclude."

[fol. 171] 35. The respondent excepts to the Proposed Finding, page 16, that:

"As long as the Association continues, it remains the respondent's weapon against its employees' free exercise of their right to self-organization and to join a union of their own choosing."

36. The respondent excepts to the Proposed Finding, page 16, that:

"We find that the respondent has dominated and interfered with the formation and administration of the Association and contributed support to it; and that by these activities the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed to them in Section 7 of the Act."

37. The respondent excepts to the Proposed Finding, page 17, that:

"Since by the statements of the Association's president, the Association has existed since the election solely for social purposes, such membership is not inconsistent with the desire of a majority of the employees to have the Union represent them for the purposes of collective bargaining."

38. The respondent excepts to the Proposed Finding, page 17, that:

"Moreover, we cannot consider membership in the Union as a free act because of our finding that the Association was dominated by the favoritism shown to it by the respondent."

39. The respondent excepts to the Proposed Finding, page 17, that:

"In the absence of evidence to the contrary there is a presumption that a majority of the employees continue to desire the Union to represent them."

40. The respondent excepts to the Proposed Finding, page 18, that:

"At these conferences the subject matter of discussion between the groups was largely confined to the provisions [fol. 172] of a proposed contract which had been submitted by the Union to the respondent on June 17."

41. The respondent excepts to the Proposed Finding, page 19, that:

"The proposal was the outcome of statements by Riley and Shinabarger that their actions were subject to the approval of the other directors of the respondent."

42. The respondent excepts to the following portion of the Proposed Finding, pages 19 and 20, that:

"That the respondent's offer was a 10 per cent increase and that the Union could 'take it or leave it.'"

43. The respondent excepts to the Proposed Finding, page 20, that:

"Wilner and other members of the Union who were present testified that Anderson, in addition, stated that Riley and Shinabarger had full authority to act for the respondent. Although this is denied by the respondent's witnesses, we believe that events which followed reasonably indicate such authority."

44. The respondent excepts to the Proposed Finding, page 20, that:

"The Union, feeling that an impasse had been reached, again solicited the aid of State and Federal mediators. The

respondent refused the suggestion of the mediators that the matter be submitted to mediation, but agreed to meet again with the Union representatives on July 1 ''

45. The respondent excepts to the Proposed Finding, page 20, that:

''Shortly after the representatives of the Union had left this conference, Riley sent for Kracik, the international representative of the Amalgamated. Kracik returned to the plant where Riley bluntly informed him that the respondent did not intend to enter into any signed agreement with the Union.''

[fol. 173] 46. The respondent excepts to the Proposed Finding, page 21, that:

''It was finally agreed at this meeting that Wilner and Ebbert should incorporate the terms on which an understanding had been reached in a memorandum.''

47. The respondent excepts to the Proposed Finding, page 21, that:

''The committees made certain other changes and all present agreed that Ebbert should prepare a final draft and that this draft should be posted on the respondent's bulletin boards on the following day.''

48. The respondent excepts to the Proposed Finding, page 21, that:

''While Riley denies that such arrangements had been made, Wilner received a copy of a corrected memorandum from Ebbert on the following day.''

49. The respondent excepts to the Proposed Finding, page 21, that:

''This fact clearly indicates that Ebbert likewise understood at the meeting of July 14, that Riley and Shinabarger had agreed to the form of the memorandum and establishes the fact that no indication had been given that their agreement was subject to further action by other directors of the respondent.''

50. The respondent excepts to the Proposed Finding, page 23, that:

"On July 31, 1937, Wilner met with Ebbert and Bostwick, attorneys for the respondent. Wilner protested against the proceedure which had been followed by the respondent throughout the negotiations and the bulletin as prepared by Heinz in particular."

51. The respondent excepts to the Proposed Finding, page 23, that:

"The next meeting held between any of the interested parties occurred on August 11. The delay in this instance alone is not attributable to the respondent."

[fol. 174] 52. The respondent excepts to the Proposed Finding, page 23, that:

"In only two material particulars did the respondent's representatives agree to a revision. The payment of overtime for work in excess of 44 hours a week was changed to payment for work in excess of 40 hours, and the name of the Union was put in the paragraph relating grievances."

53. The respondent excepts to the Proposed Finding, page 24, that:

"On August 17, Tasker, business agent of the Union, wrote the following letter to Riley:

'This is to advise you that the notice you have posted on your bill-board does not in our opinion constitute an agreement within the intent of the memorandum of understanding entered into by and between our Union and you on June 4, 1937, nor is it evidence of bona-fide collective bargaining within the meaning of that understanding or the National Labor Relations Act.

'Nevertheless, we realize that the concessions gained for the employees of the H. J. Heinz Company were the direct results of our efforts and we are anxious to conserve for the Heinz employees the benefits which they so richly deserve and for which we strove so hard.

'We, therefore, do not object to you (sic) posting of the notice but intend to lay this matter before the National Labor Relations Board in order to have that impartial agency determine whether or not you have bargained in

good faith and whether you have done what our memorandum of understanding of the 4th of June, 1937, and the law requires of you.' "

The respondent does not except to the Proposed Finding that the letter quoted was sent to it by Tasker, but does except to the basing of any Proposed Finding thereon for the reason that the letter contains false and inaccurate statements and is self-serving in its entirety.

54. The respondent excepts to the Proposed Finding, page 24, that:

[fol. 175] "It is plain from the foregoing recital of facts that the respondent has not bargained collectively with the Union within the meaning of Section 8, subdivision (5) of the Act."

55. The respondent excepts to the Proposed Finding, page 24, that:

"In the first place it is not clear that, although an accord on terms was reached, the respondent was willing to embody those terms in an agreement binding upon the parties. The respondent contends that there was such an agreement. The Union in its letter of August 17, apparently thinks that there was not. If there were no such agreement, there was, of course, a violation of Section 8, subdivision (5) within the principles set forth in Matter of St. Joseph Stock Yards Company and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 159."

56. The respondent excepts to the Proposed Finding, pages 24 and 25, that:

"However, it is not necessary to decide this matter here, since the respondent did not fulfill its obligation under Section 8, subdivision (5) in two other vital respects."

57. The respondent excepts to the Proposed Finding, page 25, that:

"First, the respondent has failed to recognize the Union, and, assuming an agreement was reached, to agree with the Union as the representative of its employees. In the 'Labor Relations Bulletin' posted on August 15, representing the

culmination of the negotiations, the respondent flatly refused to name the Union as the collective bargaining agent or to give it any express credit for the results reached."

58. The respondent excepts to the Proposed Finding, page 2[illegible], that:

"The attitude of the respondent in this matter is in strong contrast to its attitude towards the Association."

[fol. 176] 59. The respondent excepts to the Proposed Finding, page 25, that:

"The difference in the respondent's treatment of the two organizations must be viewed in the light of its antipathy towards the Union, and its use of the Association to prevent self-organization. It clearly wishes to impress its employees with the benefits of membership in the Association and to convince them that no benefits had been gained by virtue of membership in the Union."

60. The respondent excepts to the Proposed Finding, page 25, that:

"The respondent's fixed determination not to accord the Union the recognition contemplated by the Act is further evidenced by its own analysis of what it considers its liability under the bulletin of August 15."

61. The respondent excepts to the Proposed Finding, page 26, that:

"Assuming that an 'agreement' with someone had been reached, the failure of the respondent to make or to acknowledge that it had made an 'agreement' with the Union, although the Union was the party with whom it was obligated under the Act to bargain collectively, was a failure to recognize and deal with the Union as the collective bargaining agent of its employees."

62. The respondent excepts to the Proposed Finding, page 26, that:

"Secondly, the respondent refused to enter into a written signed agreement."

63. The respondent excepts to the Proposed Finding, page 27, that:

"We conclude, therefore, that the Union never abandoned either its demand, or its desire for a written signed agreement providing full recognition of the Union and embodying an understanding reached as a result of genuine collective bargaining."

[fol. 177] 64. The respondent excepts to the Proposed Finding, page 27, that:

"Beyond the definite refusal to recognize the Union or to make a written agreement with it as hereinabove discussed, we consider that the respondent's actions throughout the course of negotiations indicate that it was not acting in good faith."

65. The respondent excepts to the Proposed Finding, page 27, that:

"Officials of the respondent te 'ified that it had always been the policy of the Company not to enter into written agreements with labor orgainzations. Knowing this, the respondent nevertheless failed to disclose this policy to the Union during the negotiations which settled the strike."

66. The respondent excepts to the Proposed Finding, page 27, that:

"During its early negotiations with the Union, the respondent not only failed to notify the Union that it would not enter into a signed agreement, but made no objection to the form of Union agreement, thus affirmatively giving the Union the impression that it had no objections to entering into a written agreement."

67. The respondent excepts to the Proposed Finding, page 27, that:

"Furthermore, it is apparent that no substantial concessions relating to wages and hours were granted to the employees after negotiations with the Union, which had not already been acceeded to by the respondent at the time of its negotiations with the company-dominated Association."

68. The respondent excepts to the Proposed Finding, page 27, that:

"In at least one important provision, the Association [fol. 178] had gained better terms than the Union.*

69. The respondent excepts to the Proposed Finding, pages 27 and 28, that:

"The attitude of the respondent during the negotiations was that expressed by Anderson in the meeting of June 28, namely, that the respondent offered certain terms which the Union could 'take or leave.' "

70. The respondent excepts to the Proposed Finding, page 28, that:

"The actions of Anderson in refusing to allow the posting of the memorandum of July 14, and of Heinz in rewriting that memorandum indicate, at the least, the employment of dilatory tactics, designed to further discredit the Union."

71. The respondent excepts to the Proposed Finding, page 28, that:

"Finally, we do not consider that the Union by continuing negotiations beyond July 1, 1937, and by agreeing to the posting of the bulletin of August 15, at any time indicated that the procedure of posting a bulletin was acceptable as a substitute for a written agreement signed by the parties."

72. The respondent excepts to the Proposed Finding, page 28, that:

"By its letter of August 17, 1937, the Union specifically notified the respondent that such a procedure was not acceptable. The Union has not, therefore, waived its right to insist before this Board that the respondent has failed to bargain collectively in accordance with the provisions of the Act."

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* "All employees called out for work were guaranteed at least four hours continuous work under the agreement with the Association; under the agreement with the Union any employee instructed to report for work and who was sent home because work was not available received a minimum of two hours pay."

[fol. 179] 73. The respondent excepts to the Proposed Finding, page 28, that:

"We therefore conclude that the respondent has failed and refused to bargain collectively with the representatives of its employees within the meaning of Section 8, subdivision (5) of the Act; and that by such failure and refusal the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

74. The respondent excepts to the Proposed Finding, pages 28 and 29, that:

"We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and with foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

To the Proposed Conclusions of Law.

75. The respondent objects and excepts, for the reasons set out in 1 (a) through 1 (e) hereinabove, to each and exery Proposed Conclusion of Law set forth in said report, which Proposed Conclusions of Law appear on pages 29, 30 and 31, of said report, and are numbered 1 to 7.

76. The respondent objects and excepts, generally and specifically, to the Proposed Conclusions of Law set forth in said report, appearing on pages 30 and 31 thereof, and numbered 2, 3, 5, 6 and 7.

77. The respondent objects and excepts to the Proposed Conclusions of Law set forth in said report, for the additional reason that many of them are contrary to the Board's own Proposed Findings of Fact.

To the Proposed Order.

78. The respondent objects and excepts, for the reasons set forth in 1 (a) to 1 (e) hereinabove, to each and every [fol. 180] portion of the Proposed Order set forth in said

report, which Proposed Order appears on pages 31, 32 and 33, of said report.

79. The respondent objects and excepts, generally and specifically, to the following portions of the Proposed Order as set forth in said report, and which appear on pages 31, 32 and 33, of said report, viz.:

(1) The introductory portion of said Proposed Order.
(2) Part 1 (a) of said Proposed Order.
(3) Part 1 (b) of said Proposed Order.
(4) Part 1 (c) of said Proposed Order.
(5) Part 2 (a) of said Proposed Order.
(6) Part 2 (b) of said Proposed Order.
(7) Part 2 (c) of said Proposed Order.
(8) Part 2 (d) of said Proposed Order.

To the Failure of the National Labor Relations Board to Make Proposed Findings of Fact

80. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact that the supervisory force of the respondent consists of foremen, foreladies and persons working out of the office of the plant superintendent as general foremen, and numbers approximately 116 persons (R. 822-824).

81. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact that the respondent, through Heinrich, its superintendent, instructed all of its foremen and foreladies, individually, to play no part whatever in the labor organization activities in its plant, and that the organization were given early in the course of such organization (R. 827-828).

82. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact that the respondent, through Heinrich, its superintendent, held a meeting of its supervisory force and instructed such force not to enter in any way into the organization activities of the respondent's employees; that this meeting was [fol. 181] held immediately following a complaint from the Union that some foremen had taken part in such activities (R. 826-827).

83. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact

that both the Union and the Association solicited for membership in the respondent's plant during working hours during the labor organizations campaign (R. 990, 988).

84. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact that members of the respondent's supervisory force stopped employees of the respondent who were circulating membership petitions of Heinz Employees Association during working hours and forbade them to do so (R. 969, 992).

85. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact that the respondent, through Heinrich, its superintendent, at a meeting of all of the respondent's supervisory force, instructed the members of said supervisory force that they were to prohibit the solicitation by any employee of membership in any labor organization during working hours (R. 828-829).

86. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact that the respondent, through Riley, one of its directors, instructed all of its supervisory force not to interfere in any way whatever with the labor organizations of its employees and to permit the respondent's employees to do what they wished in that regard (R. 1329-1334) [and that upon communication of this fact to the Union, it expressed satisfaction with what had been done (R. 396, 1331)].

87. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact that the respondent, through Howard Heinz, its president, at a meeting of all of the respondent's supervisory force, held immediately after the strike was over, instructed said supervisory force not to interfere in any way with the respondent's employees in their exercise of their rights and [fol. 182] in no way to discriminate against them (R. 829).

88. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact that the respondent, through Heinrich, its superintendent, shortly after the strike was over, and instructed the members of said supervisory force not to interfere with the employees of the respondent or discriminate against them (R. 830).

89. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact that the respondent, through Heinrich, its superintendent, sent a letter (Respondent's Exhibit 3) on June 21, 1937, to all of the respondent's foremen and foreladies (R. 831), instructing them to see that every employee received a square deal regardless of affiliation.

90. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact that on June 4, 1937, before the agreement with reference to the consent election and subsequent collective bargaining (Board's Exhibit 16) was signed by the respondent, the respondent announced through counsel that it would not agree to the inclusion of the word "written," therein, for the reason that whether or not a written agreement would be entered into with the certified collective bargaining agency was a matter for future negotiation (R. 1359, 1360).

91. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact that the respondent, through Riley, one of its directors, announced at the first bargaining meeting with the representatives of the Union following settlement of the strike that Riley represented the respondent's board of directors and that he had to refer back to the directors for approval of any actions taken in the bargaining meetings (R. 1367).

92. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact that the Union wanted a written signed agreement for psychological reasons (R. 617-619).

93. The respondent objects and excepts to the failure [fol. 183] of the National Labor Relations Board to find as a fact that upon leaving the meeting of July 14, 1937, the respondent announced through Riley, one of its directors, that Riley and Shinabarger did not agree that the proposed agreement (Board Exhibit 20) would be posted the next day, but that they would attempt to secure the approval of the proposed agreement by their superiors (R. 1380, 1381).

94. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact

that Kracik, international representative of the Union, told Riley during the negotiation meetings that a written signed agreement was not required (R. 681), and agreed with Riley and Shinabarger that the agreement between the respondent and the Union need not be a written signed agreement (R. 1377).

95. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact that Wilner, attorney for the Union, admitted that the respondent, by posting the agreement on its bulletin boards on August 15, 1937, became bound thereby (R. 618).

96. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact that the Union called a meeting for August 20, 1937, for the purpose of considering the contract posted upon the bulletin boards in the respondent's plant (Respondent's Exhibit 7).

97. The respondent objects and excepts to the failure of the National Labor Relations Board to find as a fact that the Union, through its official organ, dated October, 1937, (Respondent's Exhibit 6) published the fact that an agreement had been reached between the respondent and Canning and Pickle Workers Union, Local 325, after nine weeks of negotiation, explained the agreement in brief, and printed the agreement in full under the heading "Agreement between H. J. Heinz Company and Local 325."

To the Proposed Rulings

98. The respondent excepts to the proposed ruling of the [fol. 184] National Labor Relations Board to deny the respondent's motion to dismiss the Complaint.

99. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 4) of the Trial Examiner, overruling the respondent's objection (R. 3) to the admission of proof of service of the complaint on Heinz Employees' Association.

100. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 15) of the Trial Examiner, overruling the respondent's motion to strike an answer of Kracik, a witness for the

Board. The question, answer, motion to strike and ruling thereon are as follows: (R. 14, 15)

"Q. May I interrupt a minute? What do you mean, they must come out in public? What had they been doing?

A. Well, they had been meeting secretly.

Q. Why?

A. They were afraid they would be discharged from H. J. Heinz Company the minute somebody finds out they are a members of some organization.

Mr. Reed: I move that this answer be striken as hearsay and not involved in this case at all. There is an organization. Its existence is not denied. It is recognized, and has had an election, and is bargaining with the Company, so that all this is ancient history, and has nothing to do with the present controversy.

Mr. Kleeb: On the contrary, I believe it is necessary to this case to show the general and brief history of the origin of this local so we can get an understanding for future development.

Trial Examiner Walsh: Do you wish an exception on that, Mr. Reed?

Mr. Reed: Yes."

101. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 60) of the Trial Examiner, overruling the respondent's [fol. 185] objection (R. 59) to a question directed to Novak, a witness for the Board. The question, objection and ruling thereon are as follows: (R. 59, 60).

"Q. Did you notice that the activities increased after the Heinz Employees Association began, and after it started did you observe that these activities increased?

Mr. Reed: This is objected to as very leading and certainly not material. They surely don't claim that the Company showered benefits on these people in favor of one union and against the other. It was open to all of them, wasn't it? All these events were open to everybody, weren't they?

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Trial Examiner Walsh: Objection overruled."

102. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 72) of the Trial Examiner, sustaining the objection of counsel for the Board to a question directed to Novak, a witness for said Board. The question, objection and ruling thereon are as follows: (R. 72)

"Q. You still regard that as an effort to bribe you, is that it?" You regard that incident as an effort to bribe you to get you to sell out?

A. I don't speak so good English. You had better talk plain English to me.

Q. What language do you speak?

A. You can't understand that.

Q. What language is it?

A. Slovenian.

Q. What language does Kracik speak?

Mr. Kleeb: I object to that as immaterial.

Mr. Reed: The witness expressed difficulty——

Mr. Kleeb: It has nothing to do about another witness.

Trial Examiner Walsh: Objection sustained.

[fol. 186] 103. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 77) of the Trial Examiner, sustaining the objection of counsel for the Board to a question directed to Novak, a witness for said Board. The question, objection and ruling thereon are as follows: (R. 77.)

"Q. You thought that was proper, for you to go in and break up their meeting, did you?

Mr. Kleeb: I object to the form of the question.

Trial Examiner Walsh: Sustained.

104. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 234) of the Trial Examiner, overruling the respondent's objection to a question directed to Pintus, a witness for the Board. The question, objection and ruling thereon are as follows: (R. 233, 234)

"Q. Have you observed any change in the attitude of the foremen towards you since the strike and the election?

Mr. Reed: Just a minute, I didn't hear that question.

(Question read as above recorded.)

Mr. Reed: I think this ought to be confined to what was said or done. A change of attitude may mean a frown.

Mr. Kleeb: Well, I think it is relevant. This man certainly has shown that he didn't join the association at the request of a boss and he admits joining the A. F. of L. union. I think that it is perfectly relevant to show the difference now of the bosses towards him than existed prior to the election.

Trial Examiner Walsh: Overruled. The question may be answered."

105. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 359) of the Trial Examiner, overruling the respondent's objection (R. 358) to a question directed to Frank Koontz, a witness for the Board. The question, objection and rul-
[fol. 187] ing thereon are as follows: (R. 358, 359)

"Q. What is his pension?

Mr. Reed: This is objected to.

Mr. Kleeb: Counsel for the respondent raised the question of pension. I think we are entitled to know.

Trial Examiner Walsh: Objection overruled. He may answer."

106. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 411) of the Trial Examiner, sustaining the objection of counsel for the Board to a question directed to Bodnar, a witness for said Board. The question, objection and ruling thereon are as follows: (R. 411)

"Q. You don't understand English very well, do you?
A. I no understand pretty good.
Q. You were born in Russia?
A. Yes, sir.
Q. Are you a citizen?
A. Not now.

Mr. Kleeb: I object, it is immaterial.

Trial Examiner Walsh: Overruled. I beg your pardon. Sustained.

107. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling

(R. 525) of the Trial Examiner, sustaining the objection of counsel for the Board to a question directed to Loukans, a witness for said Board. The question, objection and ruling thereon are as follows: (R. 524, 525)

"Q. Who destroyed it?

Mr. Kleeb: I object.

Trial Examiner Walsh: Objection sustained.

Mr. Kleeb: I object to the witness answering who destroyed it; it is immaterial.

[fol. 188] Trial Examiner Walsh: Sustained.

Mr. Reed: I don't think it is immaterial. This is the question of the speech that was supposed to have been made by the foreman about a paper that was lost or destroyed. The witness brought the matter up himself. Is he not permitted to say who destroyed it? He says he knows who destroyed it."

108. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 548) of the Trial Examiner, overruling the respondent's objection to a question directed to Wilner, a witness for the Board. The question, objection and ruling thereon are as follows: (R. 547, 548)

"Q. (By Mr. Kleeb) Will you look at Board's exhibit 17, Mr. Wilner, and, if you know, will you state again why that document was executed; what was the purpose of it, along with this memorandum of understanding, as you understood the stipulation?

A. Yes.

Mr. Reed: Now, I object to the witness saying what the purpose of the signing of the thing is. The paper speaks for itself. He may have his idea why it was signed, and we may have a different idea.

Mr. Kleeb: All right. I think the witness can give his idea and understanding of what the purpose of it was.

Mr. Reed: The paper stands for what it stands for. His idea of the purpose of it doesn't make any difference.

Mr. Kleeb: That's right.

Trial Examiner Walsh: Overruled."

109. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling

(R. 550) of the Trial Examiner, overruling the respondent's objection (R. 549) to a question directed to Wilner, a witness for the Board, and a motion to strike the answer thereto. The question, answer, objection, motion to strike and ruling thereon are as follows: (R. 548 to 550)

"Q. (By Mr. Kleeb) With reference to what?
[fol. 189] A. And with reference to the Heinz Employees Association and any acts on the part of the H. J. Heinz Company which we thought were against the rights given the union under the National Labor Relations Act.

Mr. Reed: I object to that and move to strike it out. The stipulation is signed by the Heinz Company; they don't know anything about what's in these affidavits. Therefore, any reservation in the mind of counsel for the union as to what they were reserving or saving by it hasn't anything to do with it.

The stipulation stands for whatever it says. Those affidavits might have been discrimination cases, might have been a man claimed he had been discharged and wanted reinstatement, or might have been a charge against the association, but when you sign a paper and you don't know what the affidavits are, you have got to be guided by the paper only, not what Mr. Wilner had in his mind.

Mr. Kleeb: If the Trial Examiner please, I think the record does disclose that there was a charge filed which is in evidence by this Canning & Pickle Workers Union on May 27th of this year, a charge filed under Section 8, subsections 1 and 2, of the Act. It's part of the pleadings.

Mr. Reed: That has nothing to do with what the company knew at the time it signed this stipulation. The company didn't know what was on file.

The Witness: Maybe I could clear this up.

Mr. Kleeb: May the witness—I suppose there is a motion to strike, is there not?

Mr. Reed: Yes.

The Witness: I don't want to volunteer any testimony.

Trial Examiner Walsh: How can you clear it up?

The Witness: Well, at that time there was a discussion as to this particular thing and the company knew, I mean, it was freely discussed by all the parties there, the fact

that there were certain charges pending before the National [fol. 190] Labor Relations Board, and I made the point, on behalf of the union, we would not enter into a consent election if we would then be confronted with a situation later on wherein the company could say, 'Well, you agreed to an election on June 4th and that wipes everything off prior to that time,' and that was the reason we insisted on the stipulation being signed, so that it would make clear anything that had gone on before that time was not wiped off the books, so to speak.

Trial Examiner Walsh: Objection overruled.

110. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 552) of the Trial Examiner, overruling the respondent's objection (R. 551) to a question directed to Wilner, a witness for the Board. The question, objection and ruling thereon are as follows: (R. 551, 552)

"Q. Was it your understanding it was a bilateral agreement or unilateral agreement?

Mr. Reed: This is objected to. It doesn't matter what his understanding of the word 'agreement' means. Counsel's opinion has nothing to do with it.

Mr. Kleeb: I think it is relevant whether this witness, at the time of this memorandum of understanding, when it was signed, what he understood the word 'agreement' to mean. There are unilateral statements of policy and bilateral statements of policy and bilateral agreements. This says 'agreement.'

The witness testified he wanted a written agreement. It could still be a written unilateral agreement. I think the witness could still understand and state whether it was his understanding that the word 'written' meant a bilateral trade agreement.

Trial Examiner Walsh: It will not bind the Board to offer a certain illumination as to the atmosphere in which this discussion was carried on. I mention this; ordinarily I wouldn't give any support to the ruling I intend to make, but it may come up again.

I know the Board and I will be assisted materially to know what the atmosphere was insofar as it can be revealed [fol. 191] by the participants in this conference, without any

prejudice to the interpretation of the agreement as it stands in written form, so I will overrule that objection."

111. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 562) of the Trial Examiner, overruling the respondent's objection (R. 561) to a question directed to Wilner, a witness for the Board. The question, objection and ruling thereon are as follows: (R. 561, 562).

"Q. Can you state briefly what was discussed at that conference?

A. I recall——

Mr. Reed: That is objected to, if the Court please. The negotiations by which these parties finally reached an agreement of some kind hasn't anything to do with the charge of this case, which is that they did not make a written agreement. Now, we are not negotiating this agreement at this time. There was one arrived at that was satisfactory to both sides. That is where this line of proof ought to start and not go through all the negotiating conferences.

Mr. Kleeb: If the Trial Examiner please, I am willing to have a ruling on that. I agree with Mr. Reed that the negotiations concluded in a labor bulletin or labor policy bulletin issued by the company to its employees sometime in the middle of August—negotiations began June, around June 17th, 1937, following the election, and after spasmodic and periodic meetings run in August, there was posted, I believe on the bulletin board in the middle of August a unilateral statement of policy, a copy of which I intend to offer in evidence. After that time there was a meeting and discussion of the contract. Then there was a change of policy, and then the company gave this unilateral contract.

I intend to show the series of meetings and what took place at them, briefly, and when this change of policy occurred, to show what led up to this unilateral labor relations bulletin, as it is called.

Trial Examiner Walsh: The objection is overruled. You may go on."

[fol. 192] 112. The respondent excepts to the proposed action of the Nation Labor Relations Board to affirm the ruling (R. 566) of the Trial Examiner, overruling the respondent's objection (R. 562) to a question directed to Wilner,

a witness for the Board, and the motion to strike out the answer thereto. The question, answer, objection, motion and ruling thereon are as follows (R. 562 to 566):

"By Mr. Kleeb:

"Q. The question was, Mr. Wilner, will you relate briefly what took place at the July 17th meeting when the contract was presented?

A. As I stated, we began to go over the contract paragraph by paragraph. I recall very distinctly that Mr. Riley objected to the phrase 'or its successor' in the first paragraph of that contract. We discussed that phase of it, and then we agreed to strike out the three words 'or its successor'. There was no objection to any other part of that introductory paragraph.

Mr. Reed: I object to that move to strike it out. If there was no objection doesn't mean anything in this case. Do you mean to say that Mr. Riley said the rest of it is all right or that the company said it or the Heinz Company adopted

We are just going to get nowhere when one attorney is it?

going to say that in his mind there was no objection to this, that, or the other.

The Witness: What I said, Mr. Reed was that there was no objection made about any of the phrasing of the rest of this paragraph. The only objection made was to the three words. I don't know what was in Mr. Riley's mind—I agree with you in that—but I do know what he said:

Mr. Reed: Well, then, testify to what he said.

The Witness: I did.

Mr. Reed: I would like to be heard.

Trial Examiner Walsh: What does the record show as the witness' answer?

(The record was read.)

Trial Examiner Walsh: It is only on the second statement that you got in the word 'made'.

[fol. 193] The Witness: I would be willing to amend the statement.

Mr. Reed: I would like to state our position about that. We are launching on something that is going to take weeks. There were conferences after conferences in which we brought up something and they brought up something, and

they brought up something, and we discussed this and they discussed that. We have a got a book full of it with every detail of what was said and done at those conferences. Now, what you are doing is you are permitting the lawyer who drew his own contract and brought it into a meeting to start through it paragraph by paragraph and because of the fact that a particular thing wasn't said when that paragraph was read, he is testifying that that was agreed to. Now, everybody knows that an agreement isn't made that way. You sit down and negotiate, you pass a point and you may bring it up in a different form, and Mr. Wilner knows and Mr. Kleeb knows that you don't get a contract in a conference by his reading his version and somebody objecting to this or that.

Now, are we going to try all of these conferences? We are prepared, if you want to. We have got every word that was said in all of them, but that isn't this case. That is not involved in this case. We are simply making a record here and that can't possibly be material.

Mr. Kleeb: In a good bit of Mr. Reed's statement I concur. I also agree that conference after conference generally is necessary to reach an agreement, and I admit that conference after conference was held.

I don't intend to go through paragraph upon paragraph of this contract and state what was said about it, but I do want to show that the contract in the various meetings, up to a certain point, this very contract, which is drawn as a bilateral contract, was used as the basis of negotiation. That is all I intended to show, and I intended to show the change of policy on the part of the company at a certain point, when they decided they were not going to sign a bilateral trade agreement or sign any other kind of an agreement.

[fol. 194] Trial Examiner Walsh: How much, Mr. Kleeb, do you intend to go into the understandings of the witness in regard to these points that were changed or points that were not changed, in this original draft?

Mr. Kleeb: Well, I can answer that by saying very little.

Trial Examiner Walsh: This is testimony, then, in regard to the charge recited in paragraph 8, subsection 5, isn't it?

Mr. Kleeb: Yes, sir.

Trial Examiner Walsh: It isn't worded as counsel recalls it in terms of arriving at an agreement or a written agreement, but collective bargaining in good faith?

Mr. Kleeb: Yes.

Trial Examiner Walsh: Something like that. And it is relevant to that which you are examining into, the steps of this particular conference?

Mr. Kleeb: Yes. I certainly believe the attitude and demeanor of a company in its representatives at meetings, so-called collective-bargaining meetings, is relevant as to whether they are bargaining as contemplated by this law or whether they are refusing to bargain collectively as contemplated by this law.

Now, the mere fact that they refuse to sign a contract, that alone is material. Certainly it is material whether the signing of a bilateral trade agreement is collective bargaining or not, but it is also material to the attitude of the representatives of the company, as to what attitude they took toward the representatives of the union in the so-called collective-bargaining meetings.

Trial Examiner Walsh: That is what you are interested in in these questions?

Mr. Kleeb: Yes, sir.

Trial Examiner Walsh: Well, then, the objection, as I understood it, and I think I got the full measure of your objection, Mr. Reed, which I will keep in mind, will be overruled at this time."

[fol. 195] 113. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 650) of the Trial Examiner, overruling the respondent's objection to a question directed to Gutowski, a witness for the Board. The question, objection and ruling thereon are as follows: (R. 650)

"Q. In Board's exhibit 16, which is a copy of the memorandum of understanding signed by the parties, the fourth paragraph says in substance that the company will recognize the organization receiving the majority of the eligible votes cast as the exclusive bargaining agency, and after 10 days after the election will commence negotiations for the purpose of reaching an agreement affecting wages, hours, and working conditions.

Will you state whether you recall any discussion about that clause, about an agreement or a written agreement, and, if so, what was that discussion?

A. It seemed to be——

Mr. Reed: I will save an objection to that that I have made heretofore.

Trial Examiner Walsh: Note the objection."

114. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 656) of the Trial Examiner, sustaining the objection of counsel for the Board to a question directed to Tasker, a witness for said Board. The question, objection and ruling thereon are as follows: (R. 656)

"Q. Did you want a written agreement?

Mr. Kleeb: I object.

A. We are talking about——

Mr. Kleeb: Just a minute.

Trial Examiner Walsh: Sustained."

115. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 666) of the Trial Examiner, overruling the respondent's objection to a question directed to Rice, a witness for the [fol. 196] Board. The question, objection and ruling thereon are as follows: (R. 666)

"Q. Would you state what your impressions were at the time from the expressions of the company representatives in your presence as to whether or not the company representatives were dealing with the union representatives as an equal and as an equal collective bargaining agency with the company representatives?

Mr. Reed: This is objected to as calling for an impression and not a statement of fact. It would be immaterial, anyway. How can you compare equals. I don't know what he means by that.

Mr. Kleeb: If the Trial Examiner, please, it seems to me that Father Rice knowing this union, being interested in it, and knowing it to be a young union, and sitting in several conferences with its representatives, observing the statements of the company representatives, mature men and men representing this large company, could certainly get impressions, definite impressions from the expressions of the representatives of the company as to what he thought the impression was he received as to whether these company

representatives were dealing with the exclusive bargaining agency equal with the company. I think he is capable——

Mr. Reed: Suppose he has impressions? They are not evidence.

Trial Examiner Walsh: Overruled. You may answer that."

116. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 693) of the Trial Examiner, overruling the respondent's objection (R. 691) to the admission of the testimony of Saposs, a witness for the Board. The testimony of Saposs appears in the record between pages 686 and 758. The objection and ruling thereon are as follows: (R. 691-693)

"Mr. Reed: The testimony of this witness is objected to for the following reasons: The witness states that he knows nothing about the negotiations that led to the making of this [fol. 197] agreement and, therefore, he is incompetent to testify. The Act of Congress defines collective bargaining; there is no explanation necessary, and the opinion of the witness would not throw any light on what is collective bargaining, particularly when the witness wasn't familiar with the negotiations that were going on at the time.

The proposed testimony would simply go into a general field of collective bargaining that is not germane to this case, and it is totally irrelevant.

Further, we have the anomalous situation here of the Labor Board acting as judge, the Labor Board acting as prosecutor, and now the Labor Board wants to be the witness, too; and it would be highly improper for the Labor Board official to state his view of collective bargaining in view of the fact that it is the Labor Board that has to decide this case.

Mr. Kleeb: Briefly, in answer to the objection, the Act does not define collective bargaining. It says it is an unfair labor practice to refuse to engage in collective bargaining. Therefore I think that an expert on the subject is very competent to testify in this hearing as to what are the processes of collective bargaining as understood by him in his studies in this field of labor.

And the fact that the witness is the chief economist of the National Labor Relations Board certainly does not make him incompetent to testify on the subject. He has stated

in the record his experiences, his education, the broad education that he has, and simply because he is the chief economist of the Board does not deny him the right to give to this case his knowledge of the subject, and I think his testimony is not only competent but very material and very relevant to the issues herein set forth in this case.

Trial Examiner Walsh: The objection will be overruled. You may proceed."

117. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 705) of the Trial Examiner overruling the respondent's objection to a question directed to Saposs, a witness for [fol. 198] the Board. The question, objection and ruling thereon are as follows: (R. 705)

By Mr. Kleeb:

"Q. In your opinion, is the refusal of an employer to insert the union name in an agreement as a party to the agreement bargaining in good faith and conducive to successful bargaining?

Mr. Reed: The same objection to this.

Trial Examiner Walsh: Objection overruled."

118. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 718) of the Trial Examiner, overruling the respondent's objection to a question directed to Saposs, a witness for the Board. The question, objection and ruling thereon are as follows: (R. 718-719)

By Mr. Kleeb:

"Q. Mr. Saposs, I would like to place in your hand Board's exhibit 22, which I mentioned previously as the labor-relations bulletin posted by the Heinz Company, and Board's exhibit 25, which you identified as a trade-agreement between the Johnstown Packing Company and a local union of the Amalgamated Meat Cutters and Butcher Workmen.

I want you to make a comparison of the two agreements. Would you care to have any time to read those, to compare them?

A. If I may, please.

Mr. Kleeb: May I ask for a few minutes recess to give Mr. Saposs time to make a comparison?

Trial Examiner Walsh: Yes; five minutes recess.

(Thereupon a short recess was had.)

Trial Examiner Walsh: The hearing will come to order. Mr. Kleeb, will you proceed?

By Mr. Kleeb:

Q. Have you made the comparison, Mr. Saposs?

A. I have.

[fol. 199] Q. Will you state your findings from that comparison?

A. I find——

Mr. Reed: I make the same objection as has been made before.

Trial Examiner Walsh: Note that objection. It is overruled.

Mr. Reed: Exception."

119. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 724) of the Trial Examiner, overruling the respondent's objection to a question directed to Saposs, a witness for the Board. The question, objection and ruling thereon are as follows: (R. 723, 724)

"Q. Mr. Saposs, the testimony in this case discloses the fact that the Labor Board conducted an election on June 8th of this year, the election being based upon an understanding, a memorandum of understanding involving the company and what is known in this record as the Heinz Employees Association and the A. F. of L. Union involved here. In that memorandum of understanding, the company agreed after the election was held to recognize the winner as an exclusive bargaining agency, and then the memorandum says, in the fourth paragraph, Board's Exhibit 16, 'The company agrees to commence negotiations for the purpose of reaching an agreement affecting wages, hours, and working conditions.'

Would you state, so far as labor terminology is concerned, when the word 'agreement' is used, what is in labor terminology, in labor relations, what is generally meant?

A. In labor relations——

Mr. Reed: Objected to for the same reasons heretofore assigned.

Mr. Walsh: Overruled.

Mr. Reed: Exception."

[fol. 200] 120. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 749) of the Trial Examiner, overruling the repondent's objection to the admission of testimony of Saposs, a witness for the Board. A portion of the testimony, the objection and ruling thereon are as follows: (R. 748, 749)

"There is another type of employers association which is called the belligerent type of employers association and that type is the anti-union type. That is the type which states either specifically or indirectly that it is opposed to its employees organizing themselves into unions. In other words, it is anti-union; which is opposed to dealing with unions and which has resorted to a variety of methods, some of which I intend to describe, to prevent employees from organizing themselves into unions or in breaking unions when employees have organized themselves. That is the belligerent employers association, headed up by the National Association of Manufacturers, by a number of others I have mentioned. Their literature indicates it, their expressions, their activities, on which there is a great deal of evidence, is indicative of the purpose and function of these employers' organizations. I want to describe, briefly, some of those activities. For instance, in pre-War days, when there was——

Mr. Reed: In addition to the objection I made to this testimony generally, this is a new field. He is starting to describe the activities of anti-union employers association. It's even further removed from this case than much of the testimony that has been admitted, and I renew the objection and point out that, in addition.

Trial Examiner Walsh: What is the purpose of this general line, this particular line? How do you intend to proceed?

Mr. Kleeb: Just a very brief statement on the activities of these so-called belligerent employers associations and I think it is material to show the general history and background——

Trial Examiner Walsh: The objection is overruled, although I wish to call your attention to the special force [fol. 201] that's raised in the objection to this particular instance."

121. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 1030) of the Trial Examiner, overruling the respondent's objection to a question directed to Greenier, a witness for the respondent. The question, objection and ruling thereon are as follows: (R. 1030)

"Q. I am asking you what you get.

Mr. Reed: If the Court please I object to this. It is not cross examination. The witness was asked nothing about that, and this is nothing but a malicious attempt to make trouble among the employees by making everyone disclose his wages.

The Witness: On this proposition——

Trial Examiner Walsh: Just a moment.

The Witness: Why ask about a personal affair?

Trial Examiner Walsh: Just a moment.

Mr. Kleeb: Just a moment.

I resent the insinuation of Mr. Reed that I am engaged in any malicious attempt to do anything like he insinuated. I certainly think I can ask these leaders of the associations what they make to show that it is so much greater than what the people under them in the rank and file make.

Mr. Reed: There is no such allegation or charge in this case at all.

Mr. Kleeb: But it certainly is material to show interest, and as Mr. Reed says interest is always material.

Trial Examiner Walsh: Objection overruled. You may proceed."

122. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 1237) of the Trial Examiner, overruling the respondent's objection (R. 1235) to a question directed by the Trial Examiner to Bennett, a witness for the respondent. The question, objection and ruling thereon are as follows: [fol. 202] (R. 1235-1237)

"Q. For employees to leave their work for half an hour, an hour, or two hours, and on company time. How do you account for the fact that very unusual procedure was embarked upon by these employees?

Mr. Reed: I hesitate to object to an Examiner's question, but the question assumes a state of facts which has not been proven by anything in this case.

Trial Examiner Walsh: Well, it only assumes two facts: One, that this solicitation occurred on company time, of which there is no contest; and, two, that it was known to be done and witnessed.

Mr. Reed: It assumes that the people left their work for half an hour or two hours or so at a time; it assumes that the testimony to that effect, practically all of which is contradicted, was true, and, besides, assuming that the witness knew of it, and it fails to take into account the fact that such occurrence, if it did happen, was not a practice but a very infrequent occurrence at the plant.

Trial Examiner Walsh: If I understand, Mr. Bennett correctly, he had heard of this.

The Witness: I heard rumors of it, yes, sir.

Trial Examiner Walsh: And he considered the rumors sufficiently substantial that he called the representators' attention to it, to give instructions to those employees not to use the time that way.

Mr. Reed: Yes.

Trial Examiner Walsh: So that it was a situation with which he was confronted and with which he dealt, and there is no doubt about the witness believing such a situation existed. Am I right?

Mr. Reed: In some instances, yes.

Trial Examiner Walsh: Yes. Now, that is all that is assumed in this question.

Mr. Reed: There is no evidence that he knew of anyone leaving for two hours, nor half an hour.

Trial Examiner Walsh: Any period of time that was [fol. 203] company time. Make it any period of time, 15 minutes.

By Trial Examiner Walsh:

Q. It occurred, according to your knowledge?

A. It has been rumored to me that it has occurred, but I don't know any specified time or how long a time.

Q. Yes. Well——

Trial Examiner Walsh: It is a somewhat curious situation, Mr. Reed. I will overrule your objection. I am somewhat hesitant in doing so. I don't want to misuse the prerogatives that I have.

Mr. Reed: Exception."

123. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 1256) of the Trial Examiner, overruling the respondent's objection (R. 1255) to a question directed to Kirschner, a witness for the respondent. The question, objection and ruling thereon are as follows: (R. 1255, 1256)

"Q. Why would you be for an inside organization because of some strike you were in of the A. F. of L.?

A. Because I think——

Mr. Reed: This is objected to as not cross examination. The witness has a right to go into any organization he wants to. His motives or reasons haven't anything to do with it, on cross examination.

Mr. Kleeb: I don't question his right to go into any kind of an organization he sees fit, but the man has stated a dislike for the A. F. of L. and an activity in this association.

Mr. Reed: Do you represent the A. F. of L., Mr. Kleeb?

Mr. Kleeb: And I asked him if the strikes motivated him going into the association; whether that was the reason or not.

Mr. Reed: The A. F. of L. isn't supposed to be a party to this procedure, and you are not supposed to represent [fol. 204] them, so what's the difference, what he thinks?

Mr. Kleeb: I am not only not supposed to represent them, and I do not represent them and you know that.

Mr. Reed: That's a matter of opinion.

Mr. Kleeb: I can ask this man a question and explain my reason for it.

Trial Examiner Walsh: You are interested, I take it, in discovering his motives in this organization?

Mr. Kleeb: That's right.

Trial Examiner Walsh: And the reference to the strike of 1906 as a motive for the reason?

Mr. Kleeb: That's right.

Trial Examiner Walsh: The objection is overruled. You may answer that question.

124. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 1283) of the Trial Examiner, overruling the respondent's objection to a question directed to Grznkowski, a witness for the respondent. The question, objection and ruling thereon are as follows: (R. 1283)

"Q. Why were you interested in any collective agency of any kind if you were so perfectly satisfied with everything?

Mr. Reed: I object to this question in the form in which it is stated. The witness can join an organization for no reason at all. He doesn't have to have a reason to join.

Mr. Kleeb: He didn't join. I don't think he joined. I think he formed. He was forming an organization.

Mr. Reed: Well, he can form an organization for any purpose or no purpose.

Mr. Kleeb: That is right. I think we are entitled to know why he was interested in forming.

Trial Examiner Walsh: Objection overruled. You may answer the question."

[fol. 205] 125. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 1300) of the Trial Examiner, overruling the respondent's objection to a question directed to Ramming, a witness for the respondent. The question, objection and ruling thereon are as follows: (R. 1300)

"Q. Suppose the company was operating under this contract and broke it, what would you do about it, what could you do about it under the contract?

Mr. Reed: Objected to as calling on the witness for a conclusion.

Mr. Bostwick: It is a legal opinion.

Mr. Reed: A legal conclusion.

Trial Examiner Walsh: Overruled."

126. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 1414) of the Trial Examiner, overruling the respondent's objection to a question directed to Riley, a witness for the respondent. The question, objection and ruling thereon are as follows: (R. 1414)

"Q. Can you name me any other kind of agreement which you would call an agreement, leaving this bulletin out of the picture for a minute, binding upon both parties, that there isn't some consideration passes to each other through that agreement, the two parties to the agreement?

Mr. Reed: This question is objected to. It's two questions in one, and it is a legal question.

A man goes to work, he renders the consideration right then. That is no question to be bantering with a lay witness about. There is a consideration for the contract if the man performs under it. It seems to me this is purely a legal argument with the witness.

Mr. Kleeb: I believe that this witness has been giving his opinions on all these matters, on labor matters; I think he can give his layman's opinion as to what he knows about contracts where there is a consideration passing between both parties to the contract.

Trial Examiner Walsh: Objection overruled."

[fol. 206] 127. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 1435) of the Trial Examiner, overruling the respondent's objection to a question directed to Riley, a witness for the respondent. The question, objection and ruling thereon are as follows: (R. 1435)

"Q. Isn't it a fact that a good number of the directors hold only enough stock to qualify them to be directors?

Mr. Reed: Objected to as incompetent and immaterial. It doesn't make any difference how they get to be directors or how much stock they hold.

Mr. Kleeb: I think it is material to show in whom the authority is vested to speak for this company and what full respect of authority Mr. Riley has as director.

Mr. Reed: A man has the same authority if he is a director whether he holds one share or 20 shares or 100 shares.

Trial Examiner Walsh: There is nothing in the exhibits on this at all?

Mr. Kleeb: No, sir.

Trial Examiner Walsh: Overruled. You may ask the question."

128. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling

(R. 1438) of the Trial Examiner, overruling the respondent's objection (R. 1437) to a question directed to Riley, a witness for the respondent. The question, objection and ruling thereon are as follows: (R. 1437, 1438)

"Q. You have been a stockholder, an owner of common stock how long?

Mr. Reed: Objected to as incompetent and immaterial. The stock ownership of this company has nothing to do with it. It is not proper cross examination.

Trial Examiner Walsh: Mr. Kleeb, can you expand on what your intentions are as to this line of inquiry?

[fol. 207] Mr. Kleeb: Well, if the Trial Examiner please, I intended to show that the control of the company really rests in one person, and that Mr. Riley and Mr. Shinabarger are merely employees and at no time, although they purported spoke for the company, were able to speak anything but policies of the company which were controlled by certain few or one man, and I think that the stock ownership is important to show that. Mr. Riley has spoken of 'we' and 'I' and 'my opinion' and 'what I thought' and so forth, and I merely wanted to show that Mr. Riley couldn't have much to do with changing the policy anyway.

Mr. Reed: None of that is material. The corporation is a defendant. The corporation functions in a certain way, and the fact that stock might be owned by a few people doesn't affect the action of the corporation at all. We are not trying the stock ownership of this company here; we are trying certain corporate actions that were carried on by the directors as corporate actions are always carried on.

Trial Examiner Walsh: The stock is not listed, I believe he said.

The Witness: It is not listed.

Trial Examiner Walsh: I overrule the objections with the hope, Mr. Kleeb, that you can get some light on this inquiry rather soon. I have some doubt, in other words, as to the relevancy, so to speak, to your case."

129. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 1463) of the Trial Examiner, overruling the respondent's objection to a question directed to Riley, a witness for the respondent. The question, objection and ruling thereon are as follows: (R. 1463)

"Q. By the way, is the H. J. Heinz Company a member of the National Association of Manufacturers?

Mr. Reed: Objected to as incompetent and immaterial. We are not trying an association of manufacturers.

Mr. Kleeb: It seems to me, if the Trial Examiner please, [fol. 208] that due to previous evidence, testimony of the position of employers associations, how they act, the employers act through associations in various policies and the attitude of associations and the particular evidence on this very employer association I named that it is material whether this company, this respondent, is a member of the National Association of Manufacturers or any other employers association.

Trial Examiner Walsh: Objection overruled.

130. The respondent excepts to the proposed action of the National Labor Relations Board to affirm the ruling (R. 1493) of the Trial Examiner, overruling the respondent's objection to a question directed to Shinabarger, a witness for the respondent. The question, objection and ruling thereon are as follows: (R. 1493)

"Q. You who were a party to agreeing to this labor relations bulletin, don't know right now whether or not under the terms of it you could decrease wages without calling a conference; is that what you want us to understand?

Mr. Reed: The agreement speaks for itself. It doesn't make any difference what the witness understands by it.

Mr. Kleeb: I think it does. I think it is material what this witness understands about the agreement to which he was a party.

Trial Examiner Walsh: You may answer the question."

131. The respondent objects and excepts to the proposed action of the National Labor Relations Board to affirm the action of the Trial Examiner in admitting the introduction of the following exhibits in evidence, over the objections of the respondent:

Board's Exhibit 6
Board's Exhibit 7
Board's Exhibit 8
Board's Exhibit 9
Board's Exhibit 10
Board's Exhibit 18

[fol. 209] Board's Exhibit 18A
Board's Exhibit 19
Board's Exhibit 20
Board's Exhibit 21
Board's Exhibit 24
Board's Exhibit 25
Board's Exhibit 26
Board's Exhibit 27
Board's Exhibit 29
Board's Exhibit 30
Board's Exhibit 31A
Board's Exhibit 31B
Board's Exhibit 31C
Board's Exhibit 31D
Board's Exhibit 31E
Board's Exhibit 31F
Board's Exhibit 31G
Board's Exhibit 32
Board's Exhibit 33.

132. The respondent reserves the right to file such additional objections and exceptions as a further examination of the record may indicate to be appropriate.

Respectfully submitted, H. J. Heinz Company, By Earl F. Reed, Roy G. Bostwick, Thorp, Bostwick, Reed & Armstrong, Its Counsel.

[fol. 210] Before the National Labor Relations Board

Case No. C-304—Filed August 9, 1938

NOTICE OF HEARING

Please Take Notice that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Tuesday, August 16, 1938, at 2 p. m., in Room 326, Shoreham Building, Fifteenth and H Streets, N. W., Washington, D. C., for the purpose of oral argument in the above entitled matter. Argument will be limited to one-half hour, and you are hereby advised that in view of the Board's docket no request for additional time made at the hearing, will be granted.

You may appear and be heard if you so desire.

Dated, Washington, D. C., August 9, 1938.

Nathan Witt, Secretary. (Seal.)

Before National Labor Relations Board

AFFIDAVIT AS TO SERVICE

Case No. C-304—Filed August 9, 1938

DISTRICT OF COLUMBIA, SS:

I, Howard W. Goheen, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 9th day August, 1938, I mailed postpaid, [fol. 211] bearing Government frank, by registered mail, a copy of the Notice of Hearing to the following name-persons, addressed to them at the following addresses:

Mr. Frank Kracik, Canning and Pickle Workers, Local Union No. 325, 922 E. Ohio St., N. S., Pittsburgh, Pa.

Thorp, Bostwick, Reed & Armstrong, 2812 Grant Building, Pittsburgh, Pa.

Heinz Employees Association, % I. C. Bennette, President, R. F. D. No. 6, Box 736-H, Mt. Olive Post Office, Pittsburgh, Pa.

Edmund M. Toland, Esq., Investment Building, Washington, D. C.

Howard W. Goheen.

Subscribed and sworn to before me this 9th day of August, 1938.

———, ———

Return Receipt

Registered Mail.
(Receipt for registered article No. 69021 omitted.)
(Original return receipt signed by Joseph Marak, agent of Frank Kracik omitted.)

Return Receipt

Registered Mail.
(Receipt for registered article No. 69022 omitted.)
(Original return receipt signed by E. Scott, agent of Thorp, Bostwick, Reed & Armstrong omitted.)

[fol. 212] Return Receipt

Registered Mail.

(Receipt for registered article No. 69023 omitted.)

(Original return receipt signed by Mrs. I. C. Bennett, agent of Mr. I. C. Bennett, President, Heinz Employees Association, omitted.)

Return Receipt

Registered Mail.

(Receipt for registered article No. 69024 omitted.)

(Original return receipt signed by R. Lusday, agent of Edmund M. Toland, Esq., omitted.)

Copy

August 19, 1938.

Mr. Frank Kracik, Representative, Canning and Pickle Workers, Local Union No. 325, 922 E. Ohio St., N. S., Pittsburgh, Pa.

Re H. J. Heinz Co.

Case No. C-304

Dear Sir:

You are hereby notified that oral argument scheduled for Tuesday, August 16, 1938, was by agreement on that date not held and that you will be notified subsequently of the [fol. 213] date and time as of which argument will be held.

Very truly yours, (Signed) Beatrice M. Stern.

Thorp, Bostwick, Reed & Armstrong, 2812 Grant Building, Pittsburgh, Pa.

Heinz Employees Association, % C. Bennett, President, R. F. D. No. 6, Box 736-H, Mt. Olive Post Office, Pittsburgh, Pa.

Edmund M. Toland, Esq., Investment Building, Washington, D. C.

National Labor Relations Board, Sixth Region.

Before National Labor Relations Board

Case No. C-304—Filed September 23, 1938

Notice of Hearing

Please Take Notice that pursuant to authority vested in the National Labor Relations Board under an Act of Con-

gress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Thursday, October 20, 1938, at 10:00 a. m., in Room 326, Shoreham Building, Fif-
[fol. 214] teenth and H Streets, N. W., Washington, D. C., for the purpose of oral argument in the above entitled matter. Argument will be limited to one-half hour, and you are hereby advised that in view of the Board's docket no request for additional time made at the hearing, will be granted.

You may appear and be heard if you so desire.

Dated, Washington, D. C., September 23, 1938.

Nathan Witt, Secretary. (Seal.)

Before National Labor Relations Board

AFFIDAVIT OF SERVICE

Case No. C-304—Filed September 23, 1938

DISTRICT OF COLUMBIA, ss:

I, Howard Goheen being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 23rd day of September, 1938, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Notice of Hearing to the following named persons, addressed to them at the following addresses:

H. J. Heinz Company, Pittsburgh, Pa.

Thorp, Bostwick, Reed & Armstrong, 2812 Grant Building, Pittsburgh, Pa.

[fol. 215] Frank Kracik, Canning and Pickle Workers Organization No. 325, 922 E. Ohio St., N. S., Pittsburgh, Pa.

Heinz Employees Association, % I. C. Bennett, President, R. F. D. No. 6, Box 736-H, Mt. Olive Post Office, Pittsburgh, Pa.

Return Receipt

Registered Mail.

(Receipt for registered article No. 69420 omitted.)

(Original return receipt signed by A. Brooks, agent of H. J. Heinz Company, omitted.)

Return Receipt

Registered Mail.

(Receipt for registered article No. 69421 omitted.)

(Original return receipt signed by Carl Walzer, agent of Thorp, Bostwick, Reed and Armstrong, omitted.)

Return Receipt

Registered Mail.

(Receipt for registered article No. 69422 omitted.)

(Original return receipt signed by Frank Kracik, agent of Canning & Pickle Workers Organization No. 325 omitted.)

Return Receipt

Registered Mail.

(Receipt for registered article No. 69423 omitted.)

(Original return receipt signed by Mrs. I. C. Bennett, agent of I. C. Bennett, President, Heinz Employees Association, omitted.)

Howard W. Goheen.

Subscribed and sworn to before me this 23rd day of September, 1938. John A. Newman, Notary Public, D. C. My Commission expires Aug. 15, 1943. (Seal.)

[fol. 216] Before National Labor Relations Board

Case No. C-304

Room 442
Shoreham Building
Washington, D. C.

A hearing was held in the above matter for the purpose of Oral Argument at the above place on October 20, 1938 at 10:00 a. m., Before:

Edwin S. Smith, Member

Donald Wakefield Smith, Member

Appearances: Mary Lemon Schleifer, of Counsel to the Board.

For the Company: Earl Reed, 2810 Grant Bldg., Pittsburgh, Pa. C. C. Hewitt, 2812 Grant Bldg., Pittsburgh, Pa.

For the Union: J. Alfred Wilner, 602 Frick Bldg., Pittsburgh, Pa. Frank Kracik, 713 East Ohio, N. E. Pittsburgh, Pa.

[fol. 217] BEFORE NATIONAL LABOR RELATIONS BOARD

In the Matter of H. J. Heinz Company and Canning and Pickle Workers, Local Union No. 325, affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America, American Federation of Labor.

Case No. C-304—Decided January 5, 1939

Food Products Industry—Interference, Restraint, and Coercion: derogatory statements concerning the union and union activities—Company-Dominated Union: domination of and interference with formation and administration and contribution of support; activities of gang leaders and other supervisory employees in activities of; solicitation of members on Company property during working hours; no loss of pay to employees engaged in solicitation; knowledge of supervisory officials of such solicitation; disestablished, as collective bargaining agent—Strike—Unit Appropriate for Collective Bargaining: production and maintenance employees, except foremen, assistant foremen, salaried employees, office help and outside truck drivers—Representatives: majority received by union in consent election presumed to continue in absence of proof to contrary—Collective Bargaining: refusal to enter into normal form of collective agreement, i. e., a written contract between the employer and representatives of employees, naming parties and signed by each; bad faith in other respects; failure to recognize union; refusal to enter into written agreement; employer ordered to embody understanding, if reached, in written signed agreement if requested to do so by union.

Mr. Robert W. Kleeb, for the Board.

Thorp, Bostwick, Reed & Armstrong, by Mr. Earl F. Reed, Mr. Donald W. Ebbert, and Mr. R. G. Bostwick, of Pittsburgh, Pa., for the respondent.

Mr. J. Alfred Wilner, of Pittsburgh, Pa., for the Union.

Mary Lemon Schleifer, of counsel to the Board.

[fol. 218] **Decision and Order.**

STATEMENT OF THE CASE

Upon charges and supplemental charges duly filed by Canning and Pickle Workers, Local Union No. 325, herein called the Union, the National Labor Relations Board, herein called the Board, by Charles T. Douds, Regional Director for the Sixth Region (Pittsburgh, Pennsylvania), issued its complaint, dated October 26, 1937, against H. J. Heinz Company, Pittsburgh, Pennsylvania, herein called the respondent. The complaint alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint alleged, in substance, that the respondent had dominated and interferred at the Pittsburgh plant with the formation and administration of a labor organization known as the Heinz Employees' Association, herein called the Association, and had contributed financial and other support to it; had refused to bargain collectively in good faith with the Union which had been selected as collective bargaining agent by a majority of the employees in an appropriate unit at the Pittsburgh plant; and by these and other acts had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. Copies of the complaint and accompanying notice of hearing were duly served upon the respondent, the Union, and the Association.

On November 6, 1937, the respondent filed an answer to the complaint, in which the respondent denied that it had engaged in or was engaging in any unfair labor practices affecting commerce within the meaning of the Act, and prayed that the complaint be dismissed.

Pursuant to notice, a hearing was held in Pittsburgh, Pennsylvania, on November 15, 16, 17, 18, 22, 23, 24, and 26, 1937, before J. Raymond Walsh, the Trial Examiner duly designated by the Board. The respondent and the Board were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

The respondent's motion to dismiss set forth in the an-
[fol. 219] swer was not renewed at the hearing and no rul-

ing has been made upon it. The motion is hereby denied. At the beginning of the hearing, counsel for the Board moved to amend the name of the Union, designated in the pleadings as Canning and Pickle Workers' Organization No. 325, to Canning and Pickle Workers, Local Union No. 325. The record does not indicate that any ruling was made on the motion. The motion is hereby allowed. Numerous motions and objections to the introduction of evidence were made during the course of the hearing by counsel for the respondent and counsel for the Board. The Board has reviewed the rulings of the Trial Examiner on motions and objections and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On December 1, 1937, the Board, acting pursuant to Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the proceeding transferred to and continued before the Board.

On April 9, 1938, the Board issued a Decision and Order in the case. On May 7, 1938, the Board served notice upon the respondent, the Union, and the Association of its intention to vacate and set aside its Findings and Order for the purpose of further proceedings before the Board. On May 13, 1938, the Board, acting pursuant to Section 10 (d) of the Act, issued an Order setting aside the Findings and Order of April 9, 1938.

On July 13, 1938, the Board issued Proposed Findings of Fact, proposed Conclusions of Law and a Proposed Order. Thereafter, respondent filed exceptions to the proposed findings, conclusions, and order. On October 20, 1938, pursuant to permission granted by the Board, oral argument was had before the Board in Washington, District of Columbia, by counsel for the respondent and counsel for the Union. The Board has considered the respondent's exceptions to the Proposed Findings of Fact, Conclusions of Law, and Order and finds them to be without merit save as consistent with the Findings of Fact, Conclusions of Law and Order hereinafter set forth.

Upon the entire record of the case, the Board makes the following:

[fol. 220] FINDINGS OF FACT

I. The Business of the Respondent

H. J. Heinz Company, a Pennsylvania corporation, is engaged in the production, sale, and distribution of food

products. The principal offices and main plant of the respondent are in Pittsburgh, Pennsylvania. Branch plants of the respondent are located in Ambridge, Chambersburg, and Sharpsburg, Pennsylvania; Princeton, Indiana; Muscatine, Iowa; Henderson, Kentucky; Holland, Michigan; Salem, New Jersey; Medina, New York; Bowling Green and Fremont, Ohio; Winchester, Virginia; and Leamington, Ontario, Canada. In addition, the respondent maintains 89 stations for receiving food products located at various points in Colorado, Indiana, Michigan, Wisconsin, and Canada. Fifty-three salting stations, where in addition to receiving food products some initial treatment of the products takes place, are maintained by the respondent at various places in Colorado, Indiana, Michigan, Wisconsin, and Canada. The respondent has sales offices in 45 principal cities of the United States and 5 cities in Canada. The respondent is the parent of five subsidiary corporations, one of which is an English and another a Spanish corporation.

Approximately 76 per cent of the total value of raw materials used in the Pittsburgh plant of the respondent, where the unfair labor practices are alleged to have occurred, originate outside the State of Pennsylvania and approximately 78 per cent of the products of the Pittsburgh plant are shipped outside the State of Pennsylvania.

II. The Labor Organizations Involved

Canning and Pickle Workers, Local Union No. 325, is a labor organization, chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, affiliated with the American Federation of Labor. Although the record is not clear, membership in the Union is apparently limited to employees of the respondent engaged in production and maintenance, exclusive of supervisory, managerial, and clerical employees.

Heinz Employees' Association is a labor organization, not affiliated with any other labor organization. It admits to membership employees in the Pittsburgh plant of the respondent, except office employees, foremen, department [fol. 221] heads, or those employed in a supervisory capacity with authority to hire and discharge.

III. The Unfair Labor Practices

A. Background of the unfair labor practices

In January 1937, a group of employees in the respondent's Pittsburgh plant requested the Amalgamated Meat Cutters and Butcher Workmen of North America, herein called the Amalgamated, to aid them in forming an organization within the plant. No organization existed among these employees prior to this time. Conferences and secret meetings were held by the interested employees until April, 1937, when an open drive for organization began and public meetings were held. On May 11, 1937, the Amalgamated granted a charter to the Union.

During April and May 1937, coincident with the open drive for membership by the Union, an organization known as Heinz Employees' Association also began a drive for members. Bitter rivalry existed between the two factions in the plant.

On May 21, 1937, Frank Kracik, international representative of the Amalgamated, met with H. N. Riley, a director of the respondent in charge of manufacturing. Kracik gave Riley a copy of a contract proposed by the Union and asked for a further meeting for the purpose of negotiating a contract. Riley agreed to meet with the representatives of the Union for this purpose on May 24, 1937.

On the morning of May 24, representatives of the Association called Riley and also asked for an appointment to negotiate a contract. Riley met both groups during that day.

At the meeting with the Union, which was the first of the two meetings, Riley demanded proof of the Union's claim that a majority of the employees at the Pittsburgh plant had chosen the Union to represent them and that it was entitled, therefore, to act as the sole collective bargaining agent. No method of determining this fact was decided upon since the Union was unwilling to reveal the identity of its members to the respondent. The meeting adjourned upon Riley's acceding to the Union's request that it be given 24 hours to show the extent of its membership.

At the meeting with the Association, Riley likewise de- [fol. 222] manded proof from the Association to substan-

tiate its claim that the Association had been selected collective bargaining agent by a majority of the employees at the Pittsburgh plant. The Association offered to show the respondent petitions authorizing the Association to act as collective bargaining agent which, it alleged had been signed by a majority of the employees at the Pittsburgh plant. Riley refused to examine the petitions, stating that he did not wish to know which employees had joined either group. Riley informed the Association's representatives that the Union likewise claimed to have been selected as collective bargaining agent by a majority of the employees and suggested the advisability of a secret election, a method which had been discussed with the representatives of the Union. The meeting adjourned without any decision being made upon how the conflicting claims of the two organizations should be resolved.

On the same night, the Union voted to strike; the strike being put into effect immediately. During the following 4 days the Mayor of the City of Pittsburgh attempted to settle the strike by securing the consent of the respondent and the two organizations to an election. The Union, claiming that the respondent had dominated and interfered in the formation and administration of the Association contrary to the provisions of the Act, was unwilling to consent to an election if the name of the Association was put on the ballot.

At the end of 4 days, when an apparent impasse had been reached, the respondent requested the Association to present its petitions for examination. On the morning of May 29, 1937, the respondent issued a public statement, announcing that it had examined and counted the signatures on the petitions; that the petitions had been signed by 1,383 employees, which constituted more than a majority of the approximately 2,000 persons employed at the Pittsburgh plant; and that the respondent would enter into collective bargaining with the Association as the sole representative of the employees in the plant.

Negotiations between the respondent and the Association for the following 3 days resulted in an agreement being reached between the parties concerning wages, hours and working conditions. The terms of the agreement were incorporated in a bulletin which was mailed by the respondent to each of its employees on June 1, 1937. The strike, how-

ever, continued and prevented the resumption of operations [fol. 223] within the plant.

Shortly thereafter, the Union sought the aid of various Federal and State mediators. On June 4, 1937, all parties agreed in writing to an election to be conducted by the Regional Director of the National Labor Relations Board for the Sixth Region. Under the terms of the agreement both the Union and the Association were to be on the ballot, the respondent agreeing that it would recognize the organization receiving a majority of the votes cast and within 10 days after announcement of the results of the election commence negotiations with such organization for the purpose of reaching an agreement relating to wages, hours, and working conditions. The Union's consent, however, was qualified by a stipulation simultaneously entered into by all parties that the holding of the election would not prejudice the rights of any party who had filed "affidavits" before the Board. The stipulation was intended to allow the Union ta continue the prosecution of charges which had been filed by it with the Regional Director for the Sixth Region on May 27, 1937, and which alleged, inter-alia, that the Association was a company-dominated union.

The election was held on June 8, 1937. Out of 1,930 votes cast, the Union received 1,079, the Association 803; 3 ballots were void and 45 challenged. The plant was reopened shortly after the holding of the election.

Pursuant to its agreement the respondent entered into negotiations with the Union, the first meeting being held June 17, 1937. Numerous conferences between the parties culminated on August 15, 1937, in the posting of a bulletin on bulletin boards throughout the respondent's plant stating that an "understanding" had been reached concerning enumerated provisions relating to wages, hours, and working conditions.

B. Interference, restraint and coercion

Five employees[1] testified that Heinrich, superintendent of the Pittsburgh plant, talked to them during April about unions. Heinrich is alleged to have told three of the witnesses that he had been informed they had attended a Union meeting, and to have then pointed out to them the benefits

[1] Canjar, Frank and John Koontz, Kuss, and Pavlakovick.

they had received in working for the respondent. In the case of another of the five, Heinrich is alleged to have [fol. 224] stated, in addition to pointing out the benefits of working for the company, that the employee would not fare so well if a union came into the plant. While Heinrich admits that he had some conversation with each of these employees at the time indicated by the employees' testimony, and likewise admits that in each instance he sought the interview, he denies that he made any of the anti-union statements attributed to him by these witnesses. Heinrich did not deny that unions might have been discussed during these conversations, but states that if they were, the subject was brought up by the employee. We feel that in each instance mentioned, the testimony of the employee witness seems more plausible than the consistent pattern of Heinrich's explanation of these interviews. In addition, the fact that the superintendent of the plant sought interviews with the witnesses mentioned and several other union members at a time when such intense rivalry and bitterness existed in the plant, and on matters, which, even accepting Heinrich's own explanation of the purpose, appear to be trivial, convinces us that Heinrich engaged in the activities alleged.

Locke, foreman of the bean building, and Vajentic, a foreman of one division of the bean building, are also charged with expressing sentiment against the Union. Locke is alleged to have stated to Maternick, an employee, that he understood Maternick was "one of these Bolshevists"; to have asked Maternick and Ahel, another employee, what they would "get from a union"; and to have told Ahel that he would be sorry he had joined the "outside" union. Locke's denials, in the light of his other activities set forth below, are likewise unconvincing. Vajentic was not called by the respondent; there is, therefore, no denial of testimony, which seems credible to us, that Vajentic asked Canjar what he was trying to do to the respondent by attending a Union meeting the night before, that the company had always been good to him and that if the Union came in he would lose his insurance and social security; that Vajentic told Maternick that if the Union came in, Howard Heinz would shut down the plant rather than deal with it; and that Vajentic told Vilha, another employee, that if a union was organized in the plant it might cause all of them to lose their jobs.

Hayes, also a foreman, is alleged to have told Frank Koontz, "Don't be like that dumb brother of yours. If any-[fol. 225] one asks you to join the outside union, tell them to go to hell"; to have told John Koontz that the union president was getting "$5 a head" for every member signed up in the Union; and to have asked John Warnick, what he thought of his "dumb buddy" who "after having 13 years of service with the H. J. Heinz Company, he turns around and signs up with an outside union" which "is led by a foreigner that hasn't even got a citizen's paper." Hayes' denials of having made each and every one of the numerous statements are particularly unconvincing.

Brooks, a foreman, and Schirer and Fisher, foreladies, were not called to deny that they had engaged in similar anti-union activities attributed to them by witnesses at the hearing.

We find that Heinrich, Locke, Vajentic, Hayes, Brooks, Schirer, and Fisher engaged in the activities attributed to them in the testimony discussed.

The above instances are cited merely as examples of the respondent's interference, restraint, and coercion of employees in their rights of self-organization. Many other instances, even though denied, are clearly proved by the testimony.

We find that the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. Domination and interference with the formation and administration of the Association

During the time this coercion and interference with the right of employees to self-organization was being exercised, the Heinz Employees' Association first appeared in the plant. Bennett, a mechanic in the can department, testified that he conceived the idea in January 1937, of forming an "inside" organization for the purpose of keeping any other organization out of the plant and to prevent strikes. Bennett testified that at that time he solicited and secured aid in forming the organization from Frank Kirschner, William Ubrey, and John Ubrey, all ma inists, and Eddie Grznkowski,[2] an inspector and repairman. However, the record

[2] Known as Eddie Kranz.

does not indicate a single instance in which any other person was solicited to join the Association prior to April 1937. [fol. 226] Beginning in April and continuing in May, petitions, in which the signers authorized the Association to act as collective bargaining agent, were circulated among the employees while at work in the plant. The five employees named as the originators of the organization were active in circulating the petitions. Other employees, many of them group leaders or departmental timekeepers, were also active in soliciting signatures.

It is not contended that departmental timekeepers occupy supervisory positions. Much testimony was adduced by the Union and the respondent as to the character of the position of group leaders, the Union contending that they are supervisory employees, the respondent that they are not. The evidence shows that each main division of the Pittsburgh plant has a foreman. Each subdivision, in turn, has foremen and foreladies who are directly responsible to the foremen of the main divisions. Groups of employees in each subdivision are further supervised by group leaders. All foremen and foreladies receive a salary and devote themselves exclusively to supervisory work. Group leaders are paid hourly, do not attend foremen's meetings, and work with the employees whose work they supervise. The respondent contends that group leaders are not supervisory employees whose activities would bind the respondent because they have no authority to hire or discharge employees. This criterion is not conclusive in determining the supervisory character of the position of group leaders under the system of operation employed. The record indicates that all hiring in the Pittsburgh plant is done through the employment office and that even foremen of main divisions cannot discharge an employee without authority, in each instance, from the superintendent. More significant is the testimony of employees who state that group leaders are their "bosses" because they give orders which must be obeyed. Certain group leaders testified that the foremen held them responsible for the work performed by their groups. Significant also is the testimony of Greenier, a group leader who was active in soliciting members for the Association, who testified that when Frank Koontz asked Greenier to join the Union, Greenier "ordered" him back on the conveyor. Heinrich, likewise, admitted the super- [fol. 227] visory character of group leaders by testifying:

"Offhand I would say (there) are probably 250 that you would call supervisors in a sense * * * just the foremen and foreladies are salaried; the others are all hourly workers.

We find that group leaders are supervisory employees whose actions are binding upon the respondent. However, our conclusions with respect to the respondent's relationship to the Association are not predicated upon the actions of group leaders alone. There is evidence in the record of illegal activities by employees whose supervisory capacity is not denied.

It is not denied by the foremen and foreladies of some departments that they knew of the activities carried on during working hours in behalf of the Association. In other departments, whether or not knowledge is denied by the supervisors, it is apparent that they could not have been unaware of what was being done. The activities of Armstrong, an employee, in addition to showing the participation of one foreman in the affairs of the Association, may be cited as an example of how openly these activities were carried on. On April 27, Brooks, foreman of the main division in which Armstrong worked, assembled 40 to 50 employees in the division and addressed them for 20 to 30 minutes during working hours. Brooks announced that he was not speaking for the company, that his remarks represented his personal opinion. He pointed out the amount of money collected by the American Federation of Labor and the salary paid to President Green and stated that the employees should not join that type of union. Brooks also stated, "Now I am not trying to influence you in any way, but why not have a union of our own here?"

The following morning Brooks sent for Armstrong and asked Armstrong what he thought of unions. Armstrong replied that he was not in favor of them, and Brooks expressed pleasure at his attitude. In the afternoon of the same day, Grznkowski, previously mentioned as one of the five originators of the Association, gave Armstrong several petitions and directed him to begin getting signatures immediately. When Armstrong protested that he was supposed to be working, Grznkowski replied that his foreman would let him go. Armstrong on that day and for about 2 to 3 hours per day for several days circulated throughout [fol. 228] the entire building getting signatures. Arm-

strong's work required his presence constantly at a machine. He testified that not only did Mozeyka, his immediate foreman, not object but that Mozeyka, placed another employee on the machine to substitute for Armstrong while he was securing the signatures. Neither Armstrong nor other employees engaged in soliciting members for the Association were docked for the time spent in these activities.

On the second day during which Armstrong solicited members for the Association, he was stopped in another department by a foreman who asked whether Brooks knew what he was doing. Armstrong then went to Brooks and told him that he was getting signatures to the petitions. Brooks examined the petitions and remarked, "Yes, I have seen them. All right." Three or four days later Brooks called Armstrong into the office, and stated "This thing isn't moving fast enough. The names aren't coming in fast enough. Why don't you get some help? For instance, get Andy Hubstenberger from the first floor and Louis Beniquista and Andy Porack from the seventh floor." Armstrong, who testified that he considered he had been given a promotion by being requested to secure signatures to the petition, requested at least one of the three employees suggested to aid him. The respondent failed to call Brooks or Mozeyka to the stand, and Armstrong's testimony is undenied on the record.

Locke, a foreman previously mentioned as having expressed antipathy to the Union, likewise assembled the employees in his department. Locke read them a prepared statement in which he stated that the petitions which most of them had signed the day before expressing their willingness to join the Association had been stolen. Locke stated that he was speaking "as an individual of H. J. Heinz Company"; that he had heard many rumors, among others, that if the Association gained a majority, wages would be cut; that such a statement was untrue, wages depend largely "on how profitable business was." Locke also stated that he considered it only fair that the employees "should all be again given the opportunity to show that you want to join the Association of Heinz Employees," and announced that a petition would be placed on the timekeeper's desk "where all of you who signed before may now sign again in perfect confidence that you will be protected in your right to express [fol. 229] your opinions as you see fit" and where "anyone

of you who did not sign may also sign at this time if you wish." Locke's sentiment was not obscured by his statements that the employees' wishes "will be protected, whether you want to join the Heinz Association of the A. F. of L., some of the men are interested in" and "if there are any who wish to join the A. F. of L., I am sure there are men here who will take care of them and see that they get signed up." Locke made no effort to secure someone to take signatures for union membership, but he did stand near the timekeeper's desk while the Association's petition was being signed.

Andy Vajentic, foreman in the bean baking department, solicited Belovitch, Martof, and Marinc to join the Association. Vajentic was not called as a witness and accordingly did not deny this solicitation.

Maurice Shindler is a highly skilled machine designer who, although not shown to have any supervisory power, occupies a position of such character as entitles him to eat in the cafeteria reserved for officers and foremen. Shindler testified that on the evening of May 20, while he was having dinner in the cafeteria, Hayes, general foreman, came in and sat down beside him. Shortly afterwards, Palivoda and Skertish, and two other foremen whose names he did not know, came in and joined Hayes. Shindler testified:

After being seated and greetings exchanged, Hayes said to Palivoda "How did you make out?" Palivoda began to enumerate that he spoke to a certain girl, and she informed him that she had signed up with the outside union, wouldn't have anything to do with the inside union. He talked to her he said, the best he could. And he said, "Hayes, do you remember how she came and begged for a job, and the father also implores us to put her on, and now she shows her gratitude by joining the outside union." And the whole tone of the conversation was that Mary this or Molly this, "I saw her. She has joined the outside union. I have talked to her. I did the best I could. I couldn't do anything. Others I have neutralized. Others have paid their initiation fee." And during the course of the conversation he mentioned that he had seen all of the 26 names on the list that Hayes gave him and had talked to them.

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Mr. Skertish also reported in the same vein.
[fol. 230] Hayes, Palivoda, and Skertish each denied that this conversation took place. Shindler seems a very credible witness, however. Palivoda is unconvincing. Skertish testified he could not have made such a report, "because Mr. Heinrich, the superintendent, wanted me not to talk unions or to have anything to do with them." We consider Hayes' denial, viewed in the light of his consistent denials that he engaged in any of the activities to which numerous witnesses testified, unconvincing. We find that the events occurred in the cafeteria as related in Shindler's testimony.

It is clearly established that Hargraves, a salaried employee who is described as the respondent's "good will man," was active in the Association during this time, although he resigned from membership when the Association's constitution and bylaws, which exclude salaried employees from membership, were adopted. The respondent admits that Hargraves was engaged in personnel and welfare work, such as visiting the homes of the employees in cases of illness or death and that on some occasions at least, he attended foremen's meetings. We find Hargraves was the representative of the respondent in the performance of the duties incident to his position and that his activities in connection with the Association are binding on the respondent.

Shindler also testified that he overheard Hargraves asking one of the stenographers in the respondent's office to take the minutes at an Association meeting, and that when she refused, Hargraves stated he had absolute proof that the Union "was organized by Croatian Communists who are getting orders from Moscow." Hargraves was not called as a witness by the respondent. We find that Hargraves engaged in the conversation testified to by Shindler.

The record shows that at some date prior to the strike, Heinrich instructed the foremen and foreladies that they were not to take part in any of the union activities of the employees and that they should practice no discrimination between employees belonging to one or the other group. These instructions were apparently given at the request of Riley, a director of the respondent. Substantially the same instructions were given to the foremen and foreladies at two or three different times after the strike by various supervisors or officials of the respondent. It is apparent

from the facts set forth in this decision that the respond-
[fol. 231] ent's supervisory staff failed to follow the instructions given during the period prior to the strike if, in fact, Heinrich intended them to be followed, which seems doubtful in view of Heinrich's own participation in such activities. The instructions given after the strike, even if followed, came after the anti-union statements and acts of the supervisory staff which are complained of, had been consummated. Under these circumstances, the respondent is not relieved from liability for the acts of supervisory employees as stated above, by showing that such instructions were given.

Although there is additional evidence, the testimony discussed shows that the respondent through the activities, set forth above, of Brooks, Mozeyka, Locke, Vajentic, Hayes, Palivoda, Skertish and Hargraves, has dominated and interfered with the formation and administration of the Association and contributed support to it; and we so conclude.

The respondent excepts to our failure to find in our proposed findings that the Union also solicited members during working hours. The respondent cites only the testimony of Catherine Hildebrand to the effect that she was solicited to join the Union during working hours by Andy Porack. The record also contains testimony by Joseph Greenier that he was solicited to join the Union while at work by Frank Koontz. We have considered this testimony, but it does not cause us to reach a different conclusion. Even if such solicitation occurred, it was negligible as compared with the solicitation engaged in by members of the Association. In addition, it is not the bare fact that solicitation by Association members occurred during working hours which is significant but rather the fact that this solicitation was with the approval, expressed or implied, of the respondent. The record does not show, and the respondent does not contend, that any supervisory employee knew of or approved of, the solicitation which may have occurred by members of the Union.

The respondent also excepts to our failure to find that members of the respondent's supervisory force stopped employees who were circulating Association petitions during working hours and forbade them to do so. The respondent cites two such incidents. We have also considered this evidence, but it does not alter our conclusion that the re-

spondent's supervisory staff in general did not actually stop solicitation. After Dominic Vajentic had secured [fol. 232] "about two" signatures to the petition, he was stopped by his foreman brother, Andy Vajentic, who stated, "You are not going to sign up anybody during working hours * * * You could do it dinner time, if you want to. I don't like to see you go around and ask anybody to sign up." Catherine Hildebrand testified that she was stopped from circulating the petition. In her direct examination Hildebrand testified that after she had spent about 45 minutes circulating the petition she was stopped by Heinrich. On cross-examination Hildebrand testified that Ann Trasiack, her forelady, stopped her from circulating the petition. There is no explanation of the apparent inconsistency and under the circumstances we consider this testimony unreliable. Even assuming that Vajentic, Heinrich, and Trasiack did not allow the circulation of the Association petitions, the respondent is responsible for the acts of other supervisors who did allow and in some instances aided in the circulation of these petitions in the plant during working hours.

We find that the respondent has dominated and interfered with the formation and administration of the Association and contributed support to it; and that by these activities the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

D. The refusal to bargain collectively

1. The appropriate unit

The complaint alleges that all of the employees at the Pittsburgh plant, except foremen, assistant foremen, salaried employees, office help, and outside truck drivers, constitute a unit appropriate for the purposes of collective bargaining. This is the unit which, by agreement of the respondent, the Union, and the Association, was used as the basis of the consent election held on June 8, 1937. Supervisory, clerical or office help, and salaried employees are normally excluded in an industrial unit; their exclusion, therefore, needs no further comment. Outside truck drivers were excluded on the grounds that they are members of Local 249 of the International Brotherhood of Teamsters,

Chauffeurs, Stablemen, and Helpers of America, likewise affiliated with the American Federation of Labor, and have dealt with the respondent as a separate unit. We see no [fol. 233] objection to their exclusion for these reasons.

We find that all of the employees at the Pittsburgh plant of the respondent, except foremen, assistant foremen, salaried employees, office help, and outside truck drivers, constitute a unit appropriate for the purposes of collective bargaining, and that such a unit insures to the respondent's employees the full benefit of their rights to self-organization and otherwise effectuates the policies of the Act.

2. Representation by the Union of a majority in the appropriate unit

As previously stated, the Union received 1,079 votes out of a total of 1,930 ballots cast in the consent election held on June 8, 1937, by the Regional Director for the Sixth Region. There is no evidence in the record as to the desires of a majority of the employees after that time, except the statement that at the time of the hearing, the Association had approximately 1,050 dues-paying members. We cannot consider membership in the Association as a free-will act because of our finding that the Association was dominated, interfered with, and supported by the respondent.[3] In the absence of evidence to the contrary, there is a presumption that a majority of the employees continued to desire the Union to represent them,[4] particularly during the period from June to August 1937, when it is alleged the respondent failed to bargain collectively with the Union.

We find that on June 8, and at all times thereafter, a majority of the employees in the unit which we have found appropriate had designated and selected the Union as their collective bargaining agent and that, pursuant to Section 9 (a) of the Act, the Union was the exclusive representative of the employees in the appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

[3] Matter of Inland Steel Company and Steel Workers Organizing Committee and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodges Nos. 64, 1010, 1101, 9 N.L.R.B., No. 73.

[4] Matter of United States Stamping Company and Enamel Workers Union No. 18630, 5 N.L.R.B., 172.

[fol. 234] 3. The refusal to bargain

As previously indicated, negotiations between the Union and the respondent looking to an agreement concerning wages, hours, and conditions of employment began on June 17, 1937. At the six or seven meetings which were held between June 17 and 28, the respondent was generally represented by Riley, by Robert G. Shinabarger, a director who is assistant to S. Mueller, one of the vice presidents of the respondent, and by Donald W. Ebbert, an attorney. At these conferences the subject matter of discussion between the groups was largely confined to the provisions of a proposed contract which had been submitted by the Union to the respondent on June 17.

The first paragraph of the proposed contract provided:

> This agreement, dated the ..... day of ....., 1937, between the H. J. Heinz Company (hereinafter referred to as the "Employer"), and the Canning & Pickle Workers Local Union No. 325 of the Amalgamated Meat Cutters and Butcher Workmen of North America, or its successor (hereinafter referred to as the "Union"). * * *

Thus the Union in this paragraph and by virtue of the form of the entire agreement indicated its desire for a signed agreement between the parties. During the negotiations each paragraph of the proposed agreement was discussed. The respondent's only expressed objection to the introductory paragraph was to the words "or its successor" which the Union agreed to eliminate. At no time during this period did Riley or Shinabarger indicate to the Union committee that the respondent would not enter into an agreement in the form proposed, although they unqualifiedly stated that other provisions of the agreement, such as the closed-shop, would not be accepted by the respondent.

The one issue on which the parties were furthest apart during these discussions related to wage increases. The Union had demanded a 20 per cent increase, with certain minima for men and for women. The respondent had offered an increase of 10 per cent, with lower minima. Although the proposed contract submitted by the Union on May 21 had only asked for a 10 per cent increase, the Union felt that a larger increase was justified in view of the events

that had transpired since May 21, the most important of [fol. 235] which was that the respondent had agreed with the Association to a 10 per cent increase on June 1, which increase, however, had never been put into effect. The position of Riley and Shinabarger from the beginning of the negotiations was that the respondent would not agree to any increase in excess of 10 per cent.

At the meeting of June 26, neither the Union nor the respondent having receded from their respective positions in respect to wage increases, Wilner, the attorney for the Union, proposed that some higher official of the respondent be present at the next meeting. The proposal was the outcome of statements by Riley and Shinabarger that their actions were subject to the approval of the other directors of the respondent.

In accordance with the suggestion, Hugh C. Anderson, a vice president of the respondent, attended the meeting of June 28. Anderson sat throughout the meeting, which lasted about 1 and a half hours, without speaking. Wilner then asked Anderson for a statement. Anderson replied that nothing had been stated which had not been previously discussed according to the reports which he had received; that the directors had full confidence in Riley and Shinabarger; that the resopndent's offer was a 10 per cent increase and that the Union could "take it or leave it." Wilner and other members of the Union who were present testified that Anderson, in addition, stated that Riley and Shinabarger had full authority to act for the respondent. Although this is denied by the respondent's witnesses, we believe that events which followed reasonably indicate such authority.

The Union, feeling that an impasse had been reached, again solicited the aid of State and Federal mediators. The respondent thereafter agreed to meet again with the Union representatives on July 1. Again the respondent failed to offer any increase in excess of its original counter proposal. The Union representatives left this meeting with the intention of submitting the respondent's proposals concerning wage increases, hours, and vacations to the union membership at a meeting to be held that night. Shortly after the representatives of the Union had left this conference, Riley sent for Kracik, the international representative of the Amalgamated. Kracik returned to the plant, where Riley bluntly informed him that the respondent did not

[fol. 236] intend to enter into any signed agreement with the Union.

The Union membership, at the meeting that night, agreed to accept the respondent's counter proposals, which, pursuant to a previous understanding went into effect in the plant on July 2, the following day, but as of July 1. At a meeting between the representatives of the respondent and the Union on the following day, Wilner voiced violent objection to the respondent's position that it would not enter into a signed agreement with the Union. Riley stated that it was the policy of the respondent not to enter into signed agreements with unions and that the respondent did not consider the Act required it to do so. It was finally agreed at this meeting that Wilner and Ebbert should incorporate the terms on which an understanding had been reached in a memorandum.

Some time before July 14, Ebbert prepared such a memorandum, and submitted it to Wilner, who made certain corrections. On July 14, Riley, Shinabarger, and Ebbert, representing the respondent, met with Wilner and other representatives of the Union to discuss the draft which Wilner and Ebbert had agreed correctly expressed the terms on which an understanding had been reached. The committees made certain other changes and all present agreed that Ebbert should prepare a final draft including such agreed changes and that this draft should be posted on the respondent's bulletin boards on the following day. It was also agreed that a copy should be sent by Ebbert to Wilner. While Riley denies that such arrangements had been made, Wilner received a copy of a corrected memorandum from Ebbert *Ebbert* on the following day. This fact clearly indicates that Ebbert likewise understood at the meeting of July 14 that Riley and Shinabarger had agreed to the form of the memorandum and establishes the fact that no indication had been given that their agreement was subject to further action by other directors of the respondent. The memorandum received by Wilner is dated July 15 and entitled "Notice To All Employees." The first paragraph states:

Following the recent election held under the supervision of the National Labor Relations Board, in which the Canning and Pickle Workers' Local Union No. 325 was selected as the collective bargaining agency for our employees, we

have had meetings with a committee from that organization. [fol. 237] and after several weeks of negotiation, have agreed with them as follows:

The agreement then set forth certain provisions relating to wages, working hours, vacations, seniority, adjustment of grievances, discharges, safety and health, and concluded with the provision.

The wages rates and other matters hereinabove set forth shall remain in effect until further notice.

The copy received by Wilner contained at the end the typewritten signature of the respondent.

Wilner, upon being notified during the day that the memorandum had not been posted in the plant, called Ebbert for an explanation. Ebbert stated that Anderson had objected to certain phrases in the memorandum and, in addition, felt that it should be submitted to Howard Heinz, president of the respondent, who was then out of the city, before it was posted.

On July 23 or 24, Ebbert informed Wilner that Heinz had seen the memorandum, and wished to rewrite it in its entirety and that no further action could be taken at that time.

On July 29 or 30, Ebbert submitted to Wilner a bulletin which had been prepared by Heinz. This bulletin differed materially from the memorandum which had been agreed upon on July 14. It was entitled:

Labor Relations Bulletin
Pittsburgh Factory, H. J. Heinz Company

The opening paragraph read:

According to the provisions of the National Labor Relations Act, we have bargained with the certified collective bargaining agency for our employees (not including, however, foremen, assistant foremen, who are paid on a monthly basis, policemen, outside truck drivers, office employees, or factory employees paid on the monthly basis) and the following understanding has been reached:

In no place in the bulletin was the Union named nor did the signature of the respondent appear at the end. The body of the bulletin constituted a complete rewording of

the memorandum of July 14. Material changes had been made, also, in the substantive provisions. The bulletin eliminated all details concerning the procedure to be fol-[fol. 238] lowed in the handling of grievances, eliminated the right of the Union to aid in the determination of wage rates for certain employees excepted from the standard rates, made overtime payable for time worked in excess of 44 hours a week, instead of 40 hours as stated in the memorandum, provided that overtime rates should not apply to the handling of perishable products, an exception which the memorandum of July 14 stated had not been "agreed" to by the Union, and made rates for beginners payable for 3 months instead of for 1 month as provided in the memorandum.

On July 31, 1937, Wilner met with Ebbert and Bostwick, attorneys for the respondent. Wilner protested against the procedure which had been followed by the respondent throughout the negotiations and the bulletin as prepared by Heinz in particular. Wilner stated, however, that the decision would be up to the Union and that he would refer the bulletin prepared by Heinz to the Union.

The next meeting held between any of the interested parties occurred on August 11. Riley, Shinabarger, and Bostwick represented the respondent at this meeting. The representatives of the Union voiced great dissatisfaction with the bulletin on several grounds, particularly the elimination of the name of the Union in the introductory paragraph and elimination of the details concerning the procedure to be followed in the handling of grievances. Representatives of the respondent stated that both changes had been made by Heinz because he wished to reduce the length of the bulletin. Although it was pointed out that the name of the Union was no longer than the phrase "certified collective bargaining agency for our employees," the respondent's representatives refused to agree to the change. In only two material particulars did the respondent's representatives agree to a revision. The payment of overtime for work in excess of 44 hours a week was changed to payment for work in excess of 40 hours, and the name of the Union was put in the paragraph relating to grievances. At the conclusion of the meeting, the representatives of the Union agreed that the bulletin should be posted on the bulletin boards of the respondent. The bulletin was posted by the respondent on August 15. On August 17, Tasker,

business agent of the Union wrote the following letter to Riley:

This is to advise you that the notice you have posted on [fol. 239] your bill-board does not in our opinion constitute an agreement within the intent of the memorandum of understanding entered into by and between our Union and you on June 4, 1937, nor is it evidence of bona-fide collective bargaining within the meaning of that understanding or the National Labor Relations Act.

Nevertheless, we realize that the concessions gained for the employees of the H. J. Heinz Company were the direct results of our efforts and we are anxious to conserve for the Heinz employees the benefits which they so richly deserve and for which we strove so hard.

We, therefore, do not object to you (sic) posting of the notice but intend to lay this matter before the National Labor Relations Board in order to have that impartial agency determine whether or not you have bargained in good faith and whether you have done what our memorandum of understanding of the 4th of June, 1937, and the law requires of you.

Upon the above recital of facts it is not entirely clear whether, although an accord on terms was reached, the respondent was willing to embody those terms in an agreement binding upon the parties. The respondent contends that there was such an agreement. The Union in its letter of August 17 apparently thinks there was not. If there was no such agreement, there was, of course, a violation of Section 8 (5) within the principles set forth in Matter of St. Joseph Stock Yards Company and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 159.[5] However, it is necessary to decide this question here, since we think it clear that the respondent [fol. 240] did not fulfill its obligation under Section 8 (5) in other vital respects.[6]

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[5] 2 N. L. R. B., 39.

[6] The respondent excepts to our failure to find in our proposed findings (1) that Wilner, attorney for the Union, admitted that the respondent "by posting the agreement on its bulletin boards on August 15, 1937, became bound there-

Section 8 (5) of the Act requires an employer to accept the procedure of collective bargaining. That procedure not only involves meeting and discussion with the representatives of employees, but also contemplates the making of a collective agreement if an understanding is reached on terms. As the Supreme Court of the United States recently declared in Consolidated Edison Company v. National Labor Relations Board (decided December 5, 1938):

> The Act contemplates the making of contracts with labor organizations. That is the manifest objective in providing for collective bargaining.[7]

We take judicial notice that historically this collective agreement has normally taken the form of a written contract between the employer and the labor organization, naming the parties to the agreement and signed by the parties.[8] The obligation of the employer under Section

[fol. 241] 8 (5) is to accept this procedure in full. The purpose of the Act is to encourage "the practice and procedure of collective bargaining" and the employer may not decline to afford its employees the full rights and advantages of collective bargaining as historically practiced.

We think it plain that the respondent did not fulfill its obligations under the Act in the present case. On July 1, Riley, the respondent's representative in negotiations, flatly

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by"; (2) that the Union called a meeting for August 20, 1937, for the purpose of "discussing the contract that is now posted on your bulletin board"; and (3) that the Union publicly stated that an "agreement between the respondent and the Union" had been reached. We find that these facts are established by the record. However, we do not regard them as determinative of the existence of an agreement between the Union and the respondent, especially in view of Tasker's letter of August 17.

[7] See also the statement of Mr. Justice Reed concurring in part and dissenting in part in the same case:

It is agreed that the "fundamental purpose of the Act is to protect interstate and foreign commerce from interruptions and obstructions caused by industrial strife." This is to be accomplished by contracts with labor organizations, reached through collective bargaining.

[8] Cf. Matter of Inland Steel Company, supra, 9, N. L. R. B., No. 73.

refused to enter into any signed agreement with the Union. Thereafter, without waiving its right to a signed contract, the Union went so far as to agree to the posting of a notice which stated that, following the selection of the Canning and Pickle Workers, Local Union No. 325, as collective bargaining agency, "we have had meetings with a committee from that organization and after several weeks of negotiation, have agreed with them as follows." Even this concession did not satisfy the respondent. It insisted upon posting a notice which merely stated, "We have bargained with the certified collective bargaining agency for our employees * * * and the following understanding has been reached." This document was not in the form of a contract between the parties; the Union was not named as a party; and the document was not signed by any party thereto. Indeed, while officers of respondent testified that they had been advised and believed that the respondent was legally bound by the provisions set forth in the bulletin of August 14, Riley stated that the "agreement" which exists is between the respondent and its employees and not between the respondent and the Union.[9]

The record makes clear that the only reason for the respondent's refusal to accept the full procedure of collective bargaining in this case lay in its desire to deny to the Union the status and prestige to which it was entitled as the recognized party to a collective agreement. Riley admitted that the respondent declined to name the Union in the bulletin, or to give it any express credit for the results reached, for "psychological" reasons. He explained those reasons as [fol. 242] "just a matter of trying to pound some of the boys down a bit," "a tendency to get this wild colt back on the reservation," and that the rights of the minority "should be protected." The attitude of the respondent in this matter is in strong contrast to its attitude toward the Association. In the bulletin which the respondent had mailed to the employees on June 1, incorporating the agreement between the Association and the respondent, not only had the name of the Association been used, but, in addition, the

[9] It is significant to note that during oral argument counsel for the respondent referred to the bulletin of June 1, which contained the agreement between the Association and the respondent, as "a contract" between the respondent and the Association.

names of the 5 officers and the 15 representatives of the Association had been prominently set forth. The difference in the respondent's treatment of the two organizations must be viewed in the light of its antipathy toward the Union, and its use of the Association to prevent self-organization. It clearly wished to impress its employees with the benefits of membership in the Association and to convince them that no benefits had been gained by virtue of membership in the Union.

The respondent's refusal to accord the Union a contract in the usual form, signed by both the parties cannot be dismissed as a matter of trivial significance. On the contrary, as the testimony of Wilner makes clear, the respondent's action deprived the Union of highly important advantages growing out of full recognition of the Union as the collective bargaining agent and full acceptance of the Union as a party to the collective agreement.[10]

The case is similar in all substantial respects to Matter of Inland Steel Company.[11] In that case the respondent refused in advance to embody in a signed agreement whatever terms might be reached after negotiations. The Board pointed out that

> • • • in circumstances like those here involved—when the bargaining is directed toward a comprehensive set of terms covering labor relations in a large industrial plant—the prevailing practice is reduction of such terms to a signed collective agreement;

that

> Union justifiably feel that full recognition of their status [fol. 243] as collective bargaining agencies on an equal footing with employers cannot be attained if they are denied the type of contractual relationships which characterize ordinary business dealings.

and that

> It is evident from the respondent's own argument that the underlying reason for its refusal to enter into a signed

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[10] Cf. National Labor Relations Board v. Pennsylvania Greyhound Lines, 303 U. S. 261, 267.

[11] Supra, 9 N. L. R. B., No. 73.

agreement was that it was anxious to forestall the organization of its employees into the S. W. O. C.

The Board's conclusion in the Inland case is equally applicable to the facts of this case:

Section 8 (5) of the Act requires an employer to accept the procedure of collective bargaining in good faith, and the nature of this obligation must be determined in the light of the prevailing practice of collective bargaining and the spirit and purpose of the Act as a means of avoiding industrial strife. We regard it as well settled that collective bargaining in good faith requires a willingness to consummate the negotiations, if successful, by entering into some sort of an agreement. And we hold that under circumstances such as are presented here, it is the employer's obligation to accede to a request that understandings reached be embodied in a signed agreement. The present controversy is projected on the backgrounds of a long struggle by labor organizations to attain full recognition of their right to recognition as collective bargaining agencies with a dignity equal to that of the employers with whom they deal. We take judicial notice of the fact that today thousands of employers have accorded unions their right to normal contractual relationships, and that, as is shown by the record, the signed collective bargaining agreement is the prevailing practice. From the viewpoint of harmonious and cooperative labor relations, as well as of sensible business practice, the importance of embodying understandings in signed agreements is obvious. Whether there may be, in some future case, cir- [fol. 244] cumstances indicating that the employer there involved may under the Act decline to embody understandings in a signed agreement, we need not here decide. It is certain that we are not confronted with such circumstances in this case. To say that there is something impracticable about a signed collective bargaining agreement with a large steel manufacturing concern, justifying an exception from the general practice, would be to shut our eyes to facts of common knowledge concerning recent labor history. As a matter of fact, the reasons advanced by the respondent, considered in connection with the factual background of the current dispute, indicate clearly that the respondent was and is motivated in its actions by a desire to check the progress of the S. W. O. C. in its plants.

The respondent has sought to show, however, through an article which was published in the "Catholic Radical Alliance" on July 8, 1937, that the Union was also unwilling to enter into a written agreement. The author of the article was Father Rice, a Catholic priest who had accompanied the Union Committee in some of its meetings with the respondent prior to July 1. In the article Father Rice stated that the terms offered by the respondent had been submitted to the employees at a mass meeting the week before (apparently referring to the meeting on the night of July 1), and that the employees, wanting peace, agreed to accept the terms offered but would not agree to sign a contract for a term. It does not appear from the article, however, that the Union did more than take the position that it was unwilling to agree to be bound by the arrangements which the Company had offered for any specific length of time. In any event, as we have seen above, on the following day Wilner, authorized representative of the Union, objected strenuously to the respondent's refusal to enter into a signed written agreement. We conclude, therefore, that the Union never abandoned either its demand or its desire for a written signed agreement providing full recognition of the Union and embodying an understanding [fol. 245] reached as a result of genuine collective bargaining.[12]

[12] The respondent excepts to our failure to include in our proposed findings a finding "that Kracik, international representative of the Union, told Riley during the negotiation meetings that a written signed agreement was not required and agreed with Riley and Shinabarger that the agreement between the respondent and the Union need not be a written signed agreement." Kracik testified that after Riley announced on July 1, that the respondent would not enter into any written agreement, he replied, "Well, it's all right with me. Whatever you people decide and whatever we decide is two different things." Kracik also testified that during the negotiations prior to July 1, Riley stated to the witness personally, "It's nothing definite we are going to sign some kind of a contract but you know the things from your other meetings and your other negotiations and you know what to do in cases like that," and that Kracik replied, "Well, that means that no agreement, that you people still living in hopes and whatever we decide, sometime, will be per-

In addition to the respondent's refusal to enter into the normal form of written agreement with the Union, the respondent's actions throughout the course of negotiations indicate that it was not bargaining in good faith. This is shown especially by the respondent's withholding from the Union the essential status and recognition of an equal during the negotiations, as hereinbefore discussed; by the respondent, through Heinz, repudiating and changing the terms of the July 14 bulletin after they had been approved [fol. 246] as final by the persons who had been represented to the Union as having full authority to act for the respondent; by the respondent's dilatory tactics manifested particularly in the refusal of Anderson to post the memorandum of July 14 and in the rewriting of the memorandum by Heinz; and by the respondent's refusal to incorporate the procedure for settling grievances in the bulletin of August 15, although it has no objection to such terms themselves.

We, therefore, conclude that the respondent has failed and refused to bargain collectively with the representatives of its employees within the meaning of Section 8 (5) of the Act; and that by such failure and refusal the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

4. The effect of the unfair labor practices upon commerce

We find that the activities of the respondent set forth in Section III above, occurring in connection with the opera-

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fectly o. k. with us because we have no agreement with the company—that (suits) me, personally—I will be on your neck every week or so if you don't sign for a certain term." We do not agree with the respondent that the replies of Kracik constituted a waiver of the Union's demand for a written signed agreement. Nevertheless, whatever interpretation is placed on Kracik's testimony, other testimony in the record establishes that the Union's original demand was for a signed agreement, that the respondent in the first instance refused to enter into a written agreement, and that other representatives of the Union objected throughout the subsequent negotiations to the respondent's refusal to enter into such an agreement.

tions of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and with foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

5. The remedy

We have found that the respondent dominated and interfered with the formation and administration of the Association and contributed support to it. Counsel for the respondent takes the position that even if such facts should be established, "it all happened in April and May, and whatever damage, if any was done, was all cured by an election." We do not so view the situation. Bennett, president of the Association, testified that at the time of the hearing the Association had between 1,050 and 1,100 dues-paying members; that since the election, the Association has existed for the purpose of carrying on social functions; but as to the future "you can never tell." In addition, the respondent has excepted to a proposed finding of the Board, that

> Since by the statements of the Association's president, the Association has existed since the election solely for [fol. 247] social purposes, such membership (in the Association) is not inconsistent with the desire of a majority of the employees to have the Union represent them for the purposes of collective bargaining.

It seems apparent that the only reason the respondent could have for objecting to such a finding is a belief that the Association either exists or is capable of acting as a collective bargaining agent for its members. The objection is clearly inconsistent wtih the respondent's argument that the damage, if any, was cured by the election. The record does not indicate that the respondent has met with the Association for the purposes of collective bargaining since the strike, and the respondent asserts that it has not. Nevertheless, so long as the Association continues, it remains a potential threat to the employees' exercise of the right of self-organization and to be represented in collective bargaining by the representatives of their own choosing. The purposes of the Act can be effectuated only by the removal of this threat. We shall, accordingly, order the respondent to disestablish the Association as the representa-

tive of any of its employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment.

Since the respondent has failed to bargain collectively with the Union as the representative of its employees, we will order the respondent, upon request, to bargain collectively with the Union for the purpose of reaching an agreement covering wages, hours, and working conditions; and, if any understanding is reached on any of such matters, and the respondent is requested to do so by the Union, to embody such understanding in a written signed agreement.

Upon the basis of the above findings of fact, and upon the entire record in the case, the Board makes the following:

Conclusions of Law

1. Canning and Pickle Workers, Local Union No. 325, and Heinz Employees' Association are labor organizations within the meaning of Section 2 (5) of the Act.

2. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Sec- [fol. 248] tion 8 (1) of the Act.

3. The respondent, by dominating and interfering with the formation and administration of Heinz Employees' Association, and by contributing support to the said organization, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

4. All the employees at the Pittsburgh plant of the respondent, except foremen, assistant foremen, salaried employees, office help, and outside truck drivers, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

5. Canning and Pickle Workers, Local Union No. 325, was on June 8, 1937, and at all time- thereafter has been, the exclusive representative of all employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

6. The respondent, by refusing to bargain collectively with Canning and Pickle Workers, Local Union No. 325, as the exclusive representative of the employees in the aforesaid unit, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, H. J. Heinz Company, Pittsburgh, Pennsylvania, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From in any manner dominating or interfering with the administration of the Heinz Employees' Association, or with the formation or administration of any other labor organization of its employees, and from contributing support to the Heinz Employees' Association, or any other labor organization of its employees;

(b) From refusing to bargain collectively with Canning and Pickle Workers, Local Union No. 325, as the exclusive representative of all the employees at the Pittsburgh plant, [fol. 249] except foremen, assistant foremen, salaried employees, office help, and outside truck drivers;

(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from the Heinz Employees' Association as the representative of any of its employees for the purposes of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment, and completely disestablish Heinz Employees' Association as such representative;

(b) Upon request, bargain collectively with Canning and Pickle Workers, Local Union No. 325, as the exclusive representative of all the employees at the Pittsburgh plant, except foremen, assistant foremen, salaried employees, office help, and outside truck drivers, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached on any such matters, embody said understanding in a written signed agreement, if requested to do so by Canning and Pickle Workers, Local Union No. 325;

(c) Post notices immediately on the bulletin boards in the Pittsburgh plant stating: (1) that the respondent will cease and desist as aforesaid; (2) that the Heinz Employees' Association is disestablished as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or any other conditions of employment, and that the respondent will refrain from any recognition thereof; and (3) that, upon request, the respondent will bargain collectively with Canning and Pickle Workers, Local Union No. 325, as the exclusive representative of all the employees in the unit which we have found appropriate; and keep said notices posted for a period of at least sixty (60) consecutive days from the date of posting;

(d) Notify the Regional Director for the Sixth Region [fol. 250] in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith.

Chairman Madden took no part in the consideration of the above Decision and Order.

Before National Labor Relations Board

AFFIDAVIT AS TO SERVICE

Case No. C-304—Filed January 5, 1939

DISTRICT OF COLUMBIA, SS:

I, George Lo Verde being duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 5th day of January, 1939, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

Canning and Pickle Workers, Local Union No. 325, 922 E. Ohio St., N. S., Pittsburgh, Pa.

Thorp, Bostwick, Reed & Armstrong, 2812 Grant Building, Pittsburgh, Pa.

Heinz Employees Association, % I. C. Bennett, President, R. F. D. No. 6, Box 736-H, Mt. Olive Post Office, Pittsburgh, Pa.

[fol. 251] Edmund M. Toland, Esq., Investment Building, Washington, D. C.

George Lo Verde.

Subscribed and sworn to before me this 5th day of January, 1939. John A. Newman, Notary Public, D. C. My commission expires Aug. 15, 1943. (Seal.)

Return Receipt

Registered Mail.

(Receipt for registered article No. 69553 omitted.)

(Original return receipt signed by Joseph J. Marak, agent of Canning & Pickle Workers, Local Union No. 325 omitted.)

Return Receipt.

Registered Mail.

(Receipt for registered article No. 69554 omitted.)

(Original return receipt signed by B. Scott, agent of Thorp, Bostwick, Reed and Armstrong omitted.)

Return Receipt

Registered Mail.
(Receipt for registered article No. 69555 omitted.)
(Original return receipt signed by I. C. Bennett, President of Heinz Employees' Association, omitted.)

Return Receipt

Registered Mail.
(Receipt for registered article No. 69556 omitted.)
(Original return receipt signed by R. Lusby, agent of Edmund M. Toland omitted.)

[fol. 252] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

Case No. 8187

H. J. HEINZ COMPANY, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD

MOTION TO DISPENSE WITH PRINTING CERTAIN EXHIBITS—Filed April 4, 1939

To the Honorable, the Judges of Said Court:

And Now, April 8, 1939, comes petitioner by its counsel and moves the Court to issue its order permitting petitioner to omit from the printed record in the above case Board's Exhibits Nos. 3, 12, 18A and 24 to 32, inclusive, introduced by the National Labor Relations Board, and in support of said Motion petitioner assigns the following reasons, among others:

1. The National Labor Relations Board has indicated to petitioner that it desires to have all of the 42 Exhibits introduced by it included in the printed record in this case with the exception of three of its Exhibits, viz: Board's Exhibits Nos. 3, 12 and 18A.

2. All of the Exhibits in the above case, including the Exhibits to which this Motion is directed, have been certi-

fied to this Court by the National Labor Relations Board, are in the possession of the Clerk, and are available for inspection by the Court.

3. Petitioner respectfully urges that all of the Exhibits to which this Motion is directed, as well as many of the other Exhibits introduced by the National Labor Relations Board, were entirely irrelevant and immaterial to a disposition of the case below, are likewise irrelevant and immaterial to a disposition of the case by this Court, which irrelevancy and immateriality may be readily determined upon an examination of the physical Exhibits as introduced, and that, therefore, it would serve no useful purpose to require petitioner to undergo the heavy expense incident [fol. 253] to printing such Exhibits as part of the printed record herein.

4. Board's Exhibit No. 24 is an official publication of the National Labor Relations Board, purports to be a summary, prepared by employees of the Board, of evidence introduced at a joint hearing before the Board involving three steel companies having no connection whatsoever with the present petitioner, is wholly incompetent, irrelevant and immaterial, and is approximately 180 pages in length. It is within the power of The National Labor Relations Board to supply to the Court copies of Board's Exhibit No. 24 if said Board so desires. In any event, there would be no useful purpose served by requiring petitioner to reprint a voluminous document that is already in print.

5. Board's Exhibits Nos. 25 to 27 are composed, in part, of correspondence between employees of the Bureau of Labor Statistics of the United States Department of Labor and labor union officers, and, in part, of copies of contracts between certain companies and their employees having no connection whatsoever with petitioner, and are wholly incompetent, irrelevant and immaterial.

6. Board's Exhibit No. 28 consists of a certificate of the Bureau of Labor Statistics of the United States Department of Labor and Statistics from its files, was introduced to support Board's Exhibits Nos. 25 to 27, is wholly incompetent, irrelevant and immaterial and has no place in the printed record in the event petitioner is granted permission to omit Board's Exhibits Nos. 25 to 27 from the printed record.

7. Board's Exhibits No. 29 and 30 consist of statistics and material published by the Massachusetts Bureau of Statistics for the year 1911, are wholly incompetent, irrelevant and immaterial and in no way concern petitioner or the present situation.

8. Board's Exhibits Nos. 31A to 31G are reprints from various issues of the Monthly Labor Review, a publication of the Bureau of Labor Statistics of the United States Department of Labor, total approximately 70 pages in length, deal with a variety of matters, ranging from collective bargaining in the petroleum industry to collective bargaining by the Amalgamated Clothing Workers, which have no connection whatsoever with petitioner, and are [fol. 254] wholly incompetent, irrelevant and immaterial, and, in addition, Board's Exhibits Nos. 31A to 31G being already in print, it would be unreasonable to require petitioner to print them again since the National Labor Relations Board is undoubtedly able to furnish the Court with additional copies thereof if the Board so desires.

9. Board's Exhibit No. 32 is an article entitled "Labor Union Agreements Analyzed and Summarized" contained in a publication of the National Association of Manufacturers, dated May 25, 1937, covers the equivalent of at least 11 printed record pages, and is wholly incompetent, irrelevant and immaterial.

10. The record in this case is exceedingly voluminous, even excluding the Exhibits to which this Motion is directed, and the heavy cost of printing the record must be borne by petitioner irrespective of the outcome of the proceeding in this Court.

11. The National Labor Relations Board has indicated to petitioner that it is agreeable to have certain of its exhibits, viz., Board's Exhibits Nos. 14, 24, 31A to 31G and 32 inserted in the printed record in their original printed form. This Motion is not directed to Board's Exhibit No. 14 and petitioner intends to have it printed as a part of the record of this case.

12. The Exhibits, with the exception of Board's Exhibit No. 14, referred to in Paragraph 11 above, even if available to petitioner in sufficient number for insertion in the printed record, are not uniform in length, width or thickness, and

do not conform to the dimensions of a record page as prescribed by the Rules of this Court pertaining thereto; all of said Exhibits being composed of pages substantially smaller than a record page except one, viz., Board's Exhibit No. 32, which is composed of pages substantially larger than a record page.

13. In addition to the fact that Board's Exhibits Nos. 24, 31A to 31G, and 32 are neither competent, relevant nor material to the issues of this case, a volume composed of printed pages of varying sizes would not be convenient for use either by the Court or by the parties, and, therefore, there is no reasonable justification for requiring the petitioner to bear the great expense incident to either the printing or the binding thereof.

14. The National Labor Relations Board is free, as is [fol. 255] petitioner, within the limits prescribed by the Rules of this Court, to print as part of its Brief any Exhibits which it may desire to present to the Court in printed form.

Wherefore, petitioner moves the Court to enter its Order in the above proceeding in accordance with the foregoing Motion.

Thorp, Bostwick, Reed and Armstrong, Counsel for Petitioner.

COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the undersigned authority, personally appeared Charles C. Hewitt, to me known, and upon being duly sworn according to law deposes and says that he is of counsel for petitioner in the foregoing Motion; that he is duly authorized to make this affidavit in his behalf; that the facts averred therein are true; and further, that he has this day caused a copy of the foregoing Motion and a Notice of Hearing thereon on the 8th day of April, 1939, to be enclosed in a properly stamped sealed envelope addressed to Charles Fahy, Esquire, General Counsel of the National Labor Relations Board, Washington, D. C.; that he caused said envelope and the contents thereof to be deposited as registered mail in the United States Post Office at Pittsburgh, Pennsylvania; and that in due course

of post the said envelope and its contents should reach the addressee thereof on April 4, 1939.

Charles C. Hewitt.

Sworn to and subscribed before me this 3rd day of April, A. D. 1939. Maude S. Kleinhans, Notary Public. My commission expires August 2, 1942. (Seal.)

[fol. 256] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

Case No. 8187—Filed April 12, 1939

H. H. HEINZ COMPANY

vs.

NATIONAL LABOR RELATIONS BOARD

Before: Hicks, Simons and Allen, JJ.

ORDER GRANTING MOTION TO DISPENSE WITH PRINTING OF CERTAIN EXHIBITS

It is ordered that the motion of petitioner to dispense with the printing of Board's Exhibits Nos. 3, 12, 18A and 24 to 32 inclusive, be and the same is granted.

Approved for Entry:

Xen. Hicks, Circuit Judge.

[fol. 257] BEFORE NATIONAL LABOR RELATIONS BOARD, SIXTH REGION

STATEMENT OF EVIDENCE

Courtroom No. 4 in the United States Federal Building, Pittsburgh, Pennsylvania, Monday, November 15, 1937

The above-entitled matter came on for hearing, pursuant to notice, at 10 o'clock a. m.

Before: J. Raymond Walsh, Trial Examiner.

APPEARANCES

Robert H. Kleeb, Attorney on behalf of the National Labor Relations Board.

Earl F. Reed, Esq., Donald W. Ebbert, Esq., and R. G.

Bostwick, Esq., of the firm of Thorp, Bostwick, Reed & Armstrong, (2812 Grant Building, Pittsburgh, Pa.)

PROCEEDINGS

Trial Examiner Walsh: The hearing will please come to order.

These are hearings before the National Labor Relations [fol. 258] Board in the Matter of the H. J. Heinz Company and the Canning and Pickle Workers, Union Local No. 325, Affiliated with the American Federation of Labor.

Who is appearing for the Board?

Mr. Kleeb: Robert H. Kleeb.

Trial Examiner Walsh: And who for the company?

Mr. Reed: Earl F. Reed, R. G. Bostwick, D. W. Ebbert.

Trial Examiner Walsh: Are there any other appearances?

I wish to inform all parties at this time that the Board's Reporter makes the only official transcript of these proceedings, and any citations, and briefs, or arguments based upon the record must cite the official transcript in all references to the record. The Board will not certify any transcript other than its official transcript for use in any court litigation.

The hearings may proceed, please.

Mr. Kleeb: If the Trial Examiner please, the complaint in this case was issued by the Government based upon charges and amended charges which were filed with the Sixth Region by the Canning and Pickle Workers, Union No. 325.

I wish at this time to offer in evidence as Board Exhibit 1, the original complaint, the original charge, an amended charge, copies of the Board's rules and regulations as amended, proof of service of said complaint, which had a notice of hearing accompanying it upon the respondent company, upon the union which filed the charges, and upon the Heinz Employees Association through its president, I. C. Bennett, said association being the one alleged in the complaint to be in existence in violation of Section 8, Subsection 2 of the Act, and the respondent's answer, which on its face shows service accepted by J. Alfred Wilner, attorney for the Local Union filing the charges, a copy of the order of the Board designating J. Raymond Walsh to act as Trial Examiner in the hearing on the issues.

Trial Examiner Walsh: Are there any objections to that?

Mr. Reed: The only item that we object to is any proof

of service on Heinz Employees Association. It is not a party to this proceeding, and I don't know why it was served or what effect the service has.

Mr. Kleeb: The Board itself feels that the Association [fol. 259] is not a party to the proceeding, but in that the existence of the Association is involved, the Board has seen fit to at least give notice to the Association that this hearing was being held, and that the Association's existence was involved in the hearing. Thus the service upon the Association and the reason—and that is the reason for the affidavit of service.

Trial Examiner Walsh: Do you wish to continue the objection to it?

Mr. Reed: Yes. I don't see that the existence of the Association is involved or could be affected if it is not a party to the proceeding, but for whatever it is worth, I suppose it is entitled to go in the record.

Trial Examiner Walsh: It will be received.

(Thereupon the document above referred to was marked as Board's Exhibit No. 1 for identification and received in evidence.)

Mr. Kleeb: I wish to move at this time to amend the complaint in the following respect. The name of the local union involved is named in the complaint and all the pleadings as Canning and Pickle Workers, Organization No. 325. I should like to move that that name be changed to Canning and Pickle Workers, Local Union No. 325.

Mr. Reed: No objection.

Trial Examiner Walsh: Is there any objection to that?

Mr. Reed: No.

Mr. Kleeb: If the Trial Examiner please, I should like to read into the record the following admissions: Paragraph one of the complaint being admitted in the answer, reads "Respondent, originally founded in 1869 is and has been since July 27, 1905, a corporation organized and existing by virtue of the laws of the Commonwealth of Pennsylvania, and is now and has continuously been engaged in the production, sale, and distribution of food products at it places of business throughout the United States and foreign countries, one of said places of business being in the City of Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania, and hereinaft referred to as the Pittsburgh Plant."

Paragraph two in the complaint, although not admitted as

[fol. 260] worded, the admission in the answer, paragraph two, is as follows:

"The Respondent, however, admits that a substantial portion of the raw materials used in the manufacture of its products is purchased from suppliers situated in states other than the Commonwealth of Pennsylvania and in foreign countries, and as such portion of such raw materials is transported with small exceptions by independent carriers to the Respondent's Pittsburgh plant, in the Commonwealth of Pennsylvania, from and through states of the United States other than the Commonwealth of Pennsylvania."

"The respondent also admits that a substantial portion of the Products manufactured by it is sold to purchasers situated in states other than the Commonwealth of Pennsylvania, and in foreign countries, and that such portion is transported with small exceptions by independent carriers from the respondent's Pittsburgh Plant, in the Commonwealth of Pennsylvania, to, into, and through states of the United States other than the Commonwealth of Pennsylvania, and to, into, and through, foreign countries.

"In answer to paragraph five of the complaint, although not admitting all the allegations, the respondent in its answer, paragraph five, does admit the following, in the following words: 'The respondent admits that on June 8, 1937, a secret ballot was conducted by the regional director of the Sixth Region of the National Labor Relations Board among the employees in the unit described in paragraph four of said complaint, and that following said ballot the National Labor Relations Board, acting through its regional director as aforesaid, certified that a majority of the employees participating therein, had cast ballots designating the union as their representative for the purpose of collective bargaining with the respondent.'"

Counsel for the Board wishes to point out that the word "Union" as used in that paragraph is the Canning and Pickle Workers, Local Union No. 325.

In paragraph six of the complaint, the first sentence is admitted in paragraph six of the respondent's answer. Said sentence in the Board's complaint reads: "On or [fol. 261] about June 10, 1937, following said secret ballot and thereafter, respondent met with the representatives of the Union for the purpose of discussing rates of pay, wages, hours of employment, and other conditions of employment."

Mr. Kleeb: The following sentence is denied, namely, that the Respondent bargained in good faith with the representatives of the Union.

Mr. Bostwick: It's denied we refused to bargain.

Mr. Kleeb: I am sorry. The denial is that they denied they refused to bargain in good faith. Thank you Mr. Bostwick.

If the Trial examiner please, in cooperation with counsel for the Respondent I wish at this time to offer in evidence as Board exhibit 2 a stipulation of facts regarding the Respondent Company and also its Pittsburgh plant, the plant involved in this controversy. The stipulation which I offer is signed by myself as counsel for the Board and Earl F. Reed and R. G. Bostwick as counsel for the Respondent. In offering this stipulation I ask counsel for the Respondent to stipulate with counsel for the Board that this does not preclude the Board from offering any further evidence in the future regarding jurisdiction which it might see fit to offer.

Trial Examiner Walsh: It is so understood.

(Thereupon the document above referred to was marked as Board's Exhibit No. 2 and received in evidence.)

Mr. Kleeb: If the Trial Examiner please, it is also stipulated by and between counsel for the Board and counsel for the Respondent that approximately 76 percent of the total value of raw materials used by the Pittsburgh plant of the Heinz Company originates from without the Commonwealth of Pennsylvania and approximately 78 percent of the total production of this plant is shipped outside the Commonwealth of Pennsylvania.

Mr. Reed, will you so stipulate?

Mr. Reed: Yes, that's right.

Mr. Kleeb: If the Trial Examiner please, in order to give a more complete understanding of the various products manufactured and produced and distributed and sold by the Pittsburgh plant I wish at this time to offer as Board's [fol. 262] exhibit No. 3 a little pamphlet issued by the company which lists the various products of that company.

Mr. Reed: No objection.

(Thereupon the document above referred to was marked as Board's Exhibit No. 3 and received in evidence.)

Mr. Kleeb: Mr. Riley, will you take the stand?

H. N. RILEY, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are H. N. Riley?

A. Yes, Sir.

Q. You live in Pittsburgh, Pennsylvania?

A. I do.

Q. And you are an officer of the H. J. Heinz Company?

A. I am a Director.

Q. Mr. Riley, to clear up a couple statements in the stipulation, Board's exhibit 2, paragraph 2, of the Stipulation of Facts states the Respondent has 89 receiving stations situated in the following places, and lists the places. Would you please state for the record what a receiving station is?

A. A receiving station is a station where we take in the raw products from the farmers that we later process into the finished product.

Q. Will you state, briefly, the reason for the company having these receiving stations in so many places?

A. Well, the raw material that we use, for a great part, is a perishable material. It comes from the farm. There are not many farms left around Pittsburgh. It necessitates our going out into various parts of the country best suited for the purpose to have the farmers grow these materials for us, and we have the stations there for convenience to deliver them to us.

Q. Paragraph 3 of the stipulation says the respondent has 53 salting stations, situated in the following places. [fol. 263] Please describe what is a salting station.

A. Well, raw material, principally cucumbers, can be treated, with not too much trouble, in the place they are received, and put into a position where they will keep. This is done by placing them in salt brine and allowing a natural fermentation to take place, after which they are in a position to ship or do what you wish to do with them. That is what is usually called a salting station.

Q. Were you an employee or employed by the Company in December of 1927?

A. I was.

Q. Were you present at a Chamber of Commerce meeting in Pittsburgh at which Howard Heinz, president of the Company, made a speech about the H. J. Heinz Company?

A. I was not.

Q. Do you recall him making such a speech?

A. I don't know the date. I know he has made a number of speeches. I don't know of that particular one.

Mr. Kleeb: If the Trial Examiner please, I have here a photostatic copy of a speech made December 10, 1927, by Howard Heinz, president of the H. J. Heinz Company, and published in "Greater Pittsburgh", then the official organ of the Chamber of Commerce of Pittsburgh, the title being "Food Preserving, Pittsburgh, the Home of the Greatest Food Preserving Industry of Its Kind in the World. Its Development from a Single Product to its Present World-Wide Service", and the speech of this gentleman is about his company, the H. J. Heinz Company. I would like to offer it in evidence.

Mr. Reed: Is it a good speech?

Mr. Kleeb: It's a fine speech.

Mr. Reed: I don't think it has anything to do with the case, but we have no objection.

(Thereupon the document above referred to was marked as Board's Exhibit No. 4 and received in evidence.)

Mr. Kleeb: That is all, Mr. Riley; thank you.

Trial Examiner Walsh: Mr. Kleeb, may I interrupt you a minute? What seems to be the relevancy of this last exhibit which we have already admitted?

Mr. Kleeb: For this purpose. Mr. Heinz, in his speech, [fol. 264] goes into great detail about the operation of the Heinz Company with reference to the control of the raw materials, the processing of them, and the control of them, distribution of the finished product, and I think it is relevant for that reason and it gives a very nice picture of the operation of the respondent.

(Witness excused.)

FRANK KRACIK, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. What is your name?

A. Frank Kracik.

Mr. Kleeb: May I go off the record for a minute, please?

Trial Examiner Walsh: Yes.

(Discussion of the record.)

By Mr. Kleeb:

Q. Where do you live?

A. 1105 Goettman Street.

Q. Pittsburgh?

A. North Side, Pittsburgh.

Q. What is your occupation?

A. International representative of the Amalgamated Meat Cutters & Butcher Workmen.

Q. Are you personally acquainted with the Canning & Pickle Workers Local Union No. 325?

A. Yes, sir.

Q. State whether or not that local is affiliated with the Amalgamated Meat Cutters & Butcher Workmen of North America.

A. Yes, that local is associated with the Amalgamated Meat Cutters & Butcher Workmen.

Q. Does the local have a charter?

A. That's right.

(Thereupon the document above referred to was marked as Board's Exhibit No. 5 for identification.)

By Mr. Kleeb:

Q. I show you Board's exhibit No. 5 for identification. Will you look at it, please, and state whether or not that is a photograph of the original charter?

A. Yes, it is.

[fol. 265] Mr. Kleeb: I offer it.

Mr. Reed: No objection to that.

Trial Examiner Walsh: It may be received.

(The document heretofore marked as "Board's Exhibit No. 5" for identification was received in evidence.)

By Mr. Kleeb:

Q. Mr. Kracik, did you personally have anything to do with the formation of this local?

A. Yes, I was the first one—That was 'way in January, 1937, when a group of people came to me, a group of seven people, and asked me if I would help them to organize a local at the H. J. Heinz Company. Well, at that particular time the Local 424 had made a deal between the western houses, which is called Pittsburgh Provision, Wilson, Armour, Swift, and Cudahy, and we were too busy, and I refused these people, and I told them, "I am not in a position to help you with the organization because too much work on my hands", and I wasn't in a position, so I referred these people to different organizations. They came back about a week later with a message that these organizations told them to come back to us again and see if we could organize them; so about two weeks later we met a few times down at the office. Once they came up to the house. And we begin to talk the question of organization, and the first thing I wanted to know why these people wanted to organize. They made the statement that the conditions at the plant isn't the way they supposed to be. That the wages should also be adjusted because the rest of the industries is adjusting the wages, and the main point was that the H. J. Heinz Company has a condition where nobody would have anything that would have a sort of privacy in the plant which they called a stool-pigeon system and that was the main object, abolishing this through the organization.

So when we formed this organization, a group of 15 people, we referred them back again to the C. I. O. and the C. I. O. made a statement that they are too busy and as part of our organization we should go ahead and take them into our organization, so we decided to form an organization.

A group of 15 people, I would say, about twice a month, every other week. When these people met they came to the conclusion that this could not last any longer, that they must come out in public and begin to organize, so one [fol. 266] day they decide——

Q. May I interrupt a minute? What do you mean, they must come out in public? What had they been doing?

A. Well, they had been meeting secretly.

Q. Why?

A. They were afraid they would be discharged from the H. J. Heinz Company the minute somebody finds out they are a member of some organization.

Mr. Reed: I move that this answer be stricken as hearsay and not involved in this case at all. There is an organization. Its existence is not denied. It is recognized, and has had an election, and is bargaining with the company, so that all this is ancient history, and has nothing to do with the present controversy.

Mr. Kleeb: On the contrary, I believe it is necessary to this case to show the general and brief history of the origin of this local so we can get an understanding for future development.

Trial Examiner Walsh: Do you wish an exception on that, Mr. Reed?

Mr. Reed: Yes. May we not have an understanding that there will be an exception without specially asking it in each case?

Mr. Kleeb: I think that is very wise.

Trial Examiner Walsh: Yes, that will be understood.

By Mr. Kleeb:

Q. Continue.

A. So this group of 15 people decide they was going to call a meeting on James Street. I think it's the German Club, called Social Lyceum or Socialist Lyceum.

Q. When was this meeting?

A. I couldn't recall the dates. It is hard for me to remember the dates.

Trial Examiner Walsh: Have you mentioned a year in connection with this?

The Witness: Yes, this was all during this particular year.

A. So this group of people went into the factory and after these people were through working they stopped them at the corners and asked them if they would come to the meeting, that there was going to be a meeting held for these people to begin this set-up, to set up a permanent organization at the H. J. Heinz Company.

So that at this particular meeting I would say there was [fol. 267] about 87 employees present, and they asked me if I would come there and speak, and I spoke again on the

question that if these people wanted an organization that we could give them the organization under the American Federation of Labor, which would be chartered—The charter would be issued from our International because our International is practically the industrial organization for the past 40 years, so these people decided they will send for a charter. They automatically filled out the application and beginning to come out in the open, advertised their meetings by leaflets and so forth. The place at James Street was small so they had to go into the Little Bohemian Hall that's on 22 Voskamp Street. And then from there, the place was also small, and they had to move in Javor Hall on Canal Street, and from Javor Hall they moved into the 1000 Vinial Street. That is also a Bohemian hall, but they are holding their meetings there at the present time every first and third Friday of each month.

By Mr. Kleeb:

Q. Mr. Kracik, did you ever approach any official of the company with reference to this organization?

A. Yes, I did.

Q. Can you recall about when—about what month or what time you did, and who you approached?

A. It was on Friday—the strike took place on Monday, and Friday before the strike I approached Mr. Riley and he had some man with him, I can't just recall the name, and I called him up and asked him for an appointment, and at that particular appointment I presented the contract which was drawn up by the H. J. Heinz Company employees and adopted by them, to have it ready for presentation on that particular Friday and give them to Monday to begin to negotiate on this particular contract. It was called "Agreement Memorandum".

Q. Pardon me a moment.

(Thereupon the document above referred to was marked as Board's Exhibit No. 6 for identification.)

By Mr. Kleeb:

Q. Do you recall the date of the strike to which you refer?

[fol. 268] A. Yes. I think it was May the 24th.

Q. That was a Monday?

A. That was on Monday.

Q. And when was it you say you went to see Mr. Riley?

A. On Friday.

Q. Prior to May the 24th?

A. Yes.

Q. I show you Board's exhibit 6 for identification. Will you look at it and state what it is, please (handing document to witness)?

A. Yes.

Q. What is it?

A. This was this memorandum that was presented to Mr. Riley.

Q. By you?

A. By me and Mr. Tasker.

Q. Who is Mr. Tasker?

A. Mr. Tasker is the local business agent for the Local 325.

Q. His name is Anthony Tasker?

A. Anthony Tasker.

Q. Was it on this Friday that you refer to that you presented this agreement?

A. Right.

Q. State whether or not you left the agreement with Mr. Riley.

A. I left that agreement there with Mr. Riley and asked him if he would give us time on Friday—rather, on Monday afternoon at two o'clock—for negotiation, and he agreed at that time for that negotiation.

Mr. Kleeb: I wish at this time to offer Board's exhibit No. 6 in evidence.

Mr. Reed: This is objected to as incompetent, not relevant. It is no contract that was ever entered into. It has nothing to do with the present controversy, which is about negotiations that occurred later, and about the failure to enter into a written contract. This preceded the strike. It was never agreed to by the company. It has no relation to the case at all.

Mr. Kleeb: I admit it was never agreed to by the company, but I think it is relevant to show the fact that this union did approach the company for the purposes of bargaining prior to the strike and to show the chronological [fol. 269] series of events which occurred in the history of this union.

Trial Examiner Walsh: May I see it, please?

(The document was handed to the Trial Examiner.)

Trial Examiner Walsh: What period of time did this precede the strike?

Mr. Bostwick: Three days.

Mr. Kleeb: May 21st. It was Monday, May 24th.

Trial Examiner Walsh: Objection overruled.

(The document heretofore marked "Board's Exhibit No. 6" for identification, was received in evidence.)

By Mr. Kleeb:

Q. To your knowledge, had any official or representative of the union been to see anybody from the company prior to your visit to Mr. Riley?

A. Yes, Mr. Call, Robert Call, C-a-l-l. He made an appointment with Mr. Riley.

Q. Prior to that?

A. Uh-huh.

Q. And to your knowledge, he did go and see Mr. Riley?

A. Yes, he did.

Q. Do you know if he had any document, agreement, or any such thing with him when he went?

A. He had some document, but what was this all about, I don't know, because I was transferred out of the city of Pittsburgh.

Q. Did you meet with Mr. Riley at 2 o'clock, Monday afternoon, May 24th, this year?

A. Yes, I did.

Q. Was Mr. Tasker with you?

A. Mr. Tasker was there.

Q. Anyone else?

A. Mr. Novak.

Q. What is his first name?

A. Frank.

Q. And who is he?

A. He is the president of the Local No. 325.

Q. Was anyone else with you from the union?

A. And there was about five or six other representatives, which I can't recall their names. I can recall one girl in particular, Mildred Novak.

Q. What was this group, a committee of the union?

A. That was a committee, that is elected by the Body to [fol. 270] negotiate that contract.

Q. And who was present from the company besides Mr. Riley, if anyone?

A. There was somebody—I can't recall the name of that person.

Q. Is the Mr. Riley to whom you refer the Mr. Riley who was on the stand a little while ago as a witness?

A. Yes.

Q. Now, will you please state, Mr. Kracik, exactly what happened or took place at this conference at 2 o'clock Monday afternoon, May 24th?

A. Well, that afternoon when we met, Mr. Riley and his secretary, or whoever that was—I called him the secretary because he was the person that was taking a certain amount of minutes down—we met them in the Auditorium Building and we sit down, and I got my contract, and Mr. Riley didn't have his contract.

And I asked them if they are ready to negotiate on a contract. Mr. Riley said to me, "Who are you?" I says, "Mr. Riley, I am sorry that you don't know me, but we met each other before already; and I am the representative of this local union, and I came here to bargain on a contract for these employees." And he says, "Who do you represent?" I said, "The majority of your employees." "Well," he says, "how do I know that that is the majority?" "Well," I says, "Mr. Riley, we are here to represent the majority because we have the majority of these people signed on the application, paying the dues, initiations, and we do feel that we have the majority.

Well, he still made his statement, and he still was under the impression that we must prove it to him that we do have the majority. So even this girl, Mildred Novak, she says, "Well, let's go down and count the applications upside down to prove it to you that we do have the majority." Mr. Riley stated that, "I am not interested how to prove it, how are you people going to prove it, that is your fight, and not mine. All I want to know, that if you people have the majority, and you got to prove it to me."

Well, I asked Mr. Riley, because he was sort of a little sore there—he got up and he says that if we prove it to him, we might get along, but he says the association has been there, and the association also claims that they have [fol. 271] the majority. "Well," I says, that if he wants to prove that, we might prove it to him, and if it is our fight, we going to carry that fight on."

"Well, Mr. Riley just joked over the top of it, and we just picked ourselves up and went back to the office, because

there was no understanding between us or the company, and this committee had the authority of calling a strike if the negotiation was broken up.

Q. From whom did they receive that authority?

A. From the body of the men and women that belonged to the organization. But we felt that this was not proper to call a strike without notifying the company, and we went back to the office and decided, and says that we going to call the company together once more, and if there is no decision given to us by the company, that automatically the strike goes in effect on the following Thursday. But that evening was a membership meeting, which when the committee and myself made an appeal to these people to postpone the question of the strike until Thursday, the people got in an uproar and demanded a strike automatically which the strike was declared at 10 o'clock that particular Monday, I think November—rather, May the 24th, and from there on we didn't meet the company until a few days later at the Mayor's office to come to some kind of an agreement on his petition for election.

Q. Now, Mr. Kracik, that strike was in effect approximately how long?

A. Around 3 weeks.

Q. And if you know, was the production of the Pittsburgh plant shut down?

A. Yes.

Q. For that time?

A. Yes.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. You had never worked for the Heinz Company, had you?

A. Never did.

Q. And you were a stranger to Mr. Riley until you began your meeting with him, so far as you know?

A. Yes, I was.

Q. So you went to him on a Friday and handed him a contract which you had already prepared; did you?

A. I didn't prepare the contract.

[fol. 272] Q. Well, you had one that he hadn't seen prior to that, had you?

A. No, that Friday he got the contract——

Q. At what time was that on Friday?

A. I think it was in the morning.

Q. In the morning. And you gave him until Monday?

A. Right.

Q. You called the strike, and it went into effect Monday without any prior notice?

Mr. Kleeb: I object. I object to the question. The witness didn't call the strike.

Mr. Reed: Well, somebody called the strike.

Mr. Kleeb: Well, the question was, "You called the strike?"

Mr. Reed: Well, the organization called the strike that went into effect Monday, did it not?

A. Beg your pardon. Our organization doesn't have any right to call any strike, or any official doesn't have any right to call a strike. It must be taken by the majority of the people from that respective local.

By Mr. Reed:

Q. Well, that didn't answer my question. Did the organization put into effect a strike on Monday?

A. The strike was adopted by the people themselves, and our organization sanctioned that strike.

Q. And that was the Monday following the Friday you handed him the contract?

A. Right.

Q. That was three days after your first acquaintance with Mr. Riley?

A. Right.

Q. (And at the first meeting, he told you that the other organization, that is, the Heinz Employees Association, claimed also to have a majority; is that right?

A. No. He asked—he told me this at the second meeting when we begin—when we wanted to negotiate on the contract.

Q. That is on Monday?

A. Yes.

Q. He told you of the other organization, the Heinz Employees Association?

A. Yes.

Q. And that they also claimed to have a majority?

A. Yes.

[fol. 273] Q. And he asked you to show that you had a majority?

A. Yes.

Q. Which you refused to do?

A. I did not refuse to do it.

Q. Well, you did not do it; did you?

A. I asked Mr. Riley to give me a suggestion how to do this thing.

Q. Well, did you make any suggestion as to how to show you had the majority?

A. No.

Q. How many people?

A. I referred to the National Labor Relations Board.

Q. Oh, you referred to the National Labor Relations Board? What did it have to do with it at that time?

A. Well, we felt that the National Labor Relations Board at that particular time would be in a position, if we gave them our applications, and the association gives them their applications, from these applications, the National Relations Board could probably give a decision who is the regular bargaining agent for that particular group of people.

Q. Did you make that suggestion at the meeting on Monday?

A. Yes. I called Mr. Dunbar, and Mr. Dunbar says that he will talk to Mr. Riley, which I think that he did at that particular time.

Q. I didn't ask you that. Did you make the suggestion to Mr. Riley at that meeting?

A. No, I did not.

Q. You did not. So there was no way proposed by you to the Heinz Company to determine who had a majority in that meeting on Monday; was there?

A. Yes, there was.

Q. Well, now, what was it?

A. I stated, and I didn't want to leave the room until Mr. Riley give us some suggestions how do we prove it to him that we have the majority.

Q. I didn't ask you that. Will you please listen to the question and then answer it if you can?

A. Yes, I will.

Q. Did you make any suggestion to Mr. Riley in that

meeting on Monday as to any way that you could establish that your union had a majority?

[fol. 274] A. I did not, but my people done it.

Q. Well, now, who done it?

A. A girl by the name of Novak.

Q. What did she say?

A. She proposed that the applications should be counted upside down so the names wouldn't be exposed in front of Mr. Riley.

Q. Did anybody object to that?

A. Mr. Riley says, "It is not—I am not interested how you going to prove it to me as long as you will prove it to me."

Q. All right. Then he agreed to it, then?

A. He did not.

Q. Well, he said he didn't care how you did it as long as you proved it?

A. He didn't tell this girl to bring the applications.

Q. Oh, you were expecting him to ask you to bring them in to count them?

A. That is right; that is correct.

Q. And when he didn't make that suggestion, you didn't make it either?

A. No, I did not.

Q. And so you shut the plant down on Monday?

A. I didn't shut the plant down.

Q. Well, the union did, didn't it?

A. The organization did, the people themselves.

Q. Yes. Well, you are speaking for them, are you not?

A. That is right.

Q. Yes. And the company made no effort to operate the plant during the strike?

A. Yes, they did.

Q. When?

A. From the beginning. They blowed a whistle, and they had an amplifying system there to call these employees to work, that their jobs are secure, and that nobody has any right to harm them if they will come back on their jobs.

Q. Well, there was no operation in the plant?

A. There was no operation.

Q. How long was it shut down?

A. About three weeks.

Q. About how many people were at the meeting the night you voted on the strike?

A. The hall will hold about 500 feet. There were 300 [fol. 275] there, and I would say about 700 people on the outside, which was listening through the amplifying system.

Q. You took a vote of those people?

A. Yes.

Q. Do you know what the result of the vote was?

A. Yes.

Q. How many voted for a strike?

A. Everyone, unanimously.

Q. And they were all Heinz employees, were they?

A. Yes.

Q. You knew that, did you?

A. Yes.

Q. Weren't the people from the Pittsburgh Provision Packing or other companies?

A. No.

Q. Did you give any notice to the employees that you were going to take a vote on a strike that night?

A. No. The employees?

Q. Yes.

A. No, I did not.

Q. So they did not come to the meeting knowing that they were going to vote on a strike?

A. They come to the meeting to get some results to hear the results of this particular negotiation which was took place that Monday afternoon.

Q. They didn't know they were going to vote on the strike?

A. No.

Mr. Reed: That is all.

Redirect examination.

By Mr. Kleeb:

Q. Do you recall during what month of this year the first public meeting of the Local Union was held?

A. I think it was in April.

Q. And prior thereto the meetings were not public?

A. No.

Q. By the way, how was that first meeting in April advertised?

A. Well, we called it the grapevine system; that is, going by mouth from mouth to mouth advertising, sort of.

Mr. Kleeb: I wish to call the Trial Examiner's attention [fol. 276] to the charge attached to the complaint charging the company with violating Section 8, sub-sections 1 and 2, having been filed by Frank Kracik on the 27th of May, 1937. I am merely pointing that date out for future development of the case.

That is all, Mr. Kracik.

Recross-examination.

By Mr. Reed:

Q. The strike was already in force, wasn't it, on the 27th of May?

A. Yes.

Q. So that this complaint that you filed with the Labor Board was after the strike was in force?

A. No, it was before.

Q. The 27th of May?

A. They wouldn't accept it. They claimed that until this Heinz Association will come in full force, then the charges is going to come up.

Q. Well, do you say that this is not the date of your complaint, the 27th of May?

A. Yes, sir, that was.

Q. That was after the strike started?

A. Yes, but the petition—I made that petition about three weeks before the strike.

Q. You mean you brought it up?

A. I was with the National Labor Relations Board, and I brought it up.

Q. You talked to them before the strike?

A. Yes, sir.

Q. You mean you signed the complaint before the strike?

A. No, I did not.

Q. Did you tell the company anything about your having been to the Labor Board?

A. I did not.

Q. Was the Labor Board holding that in reserve?

A. Yes.

Q. Did they tell you to say nothing about the complaint?

A. The Labor Board says there isn't enough, sufficient—not enough proof to give me a right to sign a petition.

Q. Well, then, did you sign it or didn't you sign it?

A. I did not sign that.

[fol. 277] Q. Then you did sign it on the 27th, is that right?

A. Right.

Q. All you mean is that you had gotten it up before that but you didn't sign it before the 27th?

A. I did sign the 27th, but not before that.

Q. All right. Did Mr. Dunbar, the Labor Director, regional labor director, suggest an election to you before the strike was called?

A. No, he did not.

Q. You had no thought of that when you talked to Mr. Riley?

A. Yes, I did.

Q. Well, why didn't you suggest it to him?

A. Why didn't Mr. Riley suggest to us?

Q. I see. But he hadn't talked to the National Labor Board. You had been talking to them, hadn't you? You were the one that had been talking to the Labor Board?

A. That is right. But we came there, and if Mr. Riley would have made a suggestion, I was man enough to adopt and take any suggestion whatsoever, but Mr. Riley made a statement that that is not his fight, it is our fight, and we felt that if it was our fight, that we are going to fight it through.

Mr. Reed: That is all.

Redirect examination.

By Mr. Kleeb:

Q. To clear this up, did you not file a petition for certification of your organization as the bargaining agency before the strike?

A. Yes.

Q. A petition?

A. Yes, a petition.

Q. But the charge charging the company with violating the Section 8, sub-section 2 of the Act, involving inside or company unions was filed May the 27th?

A. That was filed after the strike.

Q. State whether or not you were willing to have an election with just your local on the ballot?

A. Yes, just our local on the ballot, correct.

Q. And you were willing to do that after you filed the petition with the Labor Board?

A. Right.

Q. Why did you not wish to consent to an election with [fol. 278] the Association also on the ballot?

A. Because I felt that that was a company union, and I made a statement that our organization will not go on a ballot with the company union because we are an organization that is affiliated with the A. F. of L.

Q. And it was following the strike that you filed this charge with the Labor Board that the Heinz Employees Association was a company union?

A. That is right.

Q. One other question. That petition was withdrawn, was it not, after the election?

A. That was withdrawn.

Q. After the election?

A. No, that petition we decided we draw this petition if the company is going to give us some kind of a statement when we should go into the negotiation after the election, and the minute the strike was over, the petition was withdrawn.

Q. Well, I mean it was after the election?

A. Yes, after the election; that is correct.

Mr. Kleeb: That is all.

(Witness excused.)

Mr. Kleeb: Frank Novak.

Frank Novak, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. What is your name?

A. Frank Novak.

Q. Where do you live?

A. 862 Springarden Avenue, north side, Pittsburgh.

Q. Are you now employed at the Pittsburgh Plant of the H. J. Heinz Company?

A. Yes.

Q. How long have you been employed there?

A. The last—I was there twice, the last time four and a half years.

Q. In what department did you work at the plant in the spring of this year?

A. The cooperage department.

Q. What do you do now?

A. Millwright.

[fol. 279] Q. Were you active in the local union from the beginning, from the very beginning of it?

A. Not from January, but I was from April.

Q. Can you state about when you first got interested in the A. F. of L. local?

A. Around the 12th, 14th or 15th of April.

Q. Why did you become interested at that time?

A. Well, I was interested because we felt that—I felt that——

Q. Why?

A. —that the Heinz inside employees were pretty well needed for a union in there, so I says to myself, "Well, somebody has to get up there and have a little nerve and do go out and get the people together."

Q. Were you an active member?

A. Yes.

Q. Have you been active since you joined?

A. Yes.

Q. Did you actively solicit members to the union?

A. For us, yes.

Q. How would you go about soliciting members as a general practice?

A. As a general practice, I would go, and I would talk to them in the noon hour or before working hours, before working times or after working times.

Q. Where would you solicit at the noon hour? Where?

A. At the dining room of H. J. Heinz Company, service building.

Q. How would you do it?

A. I talked to them at first, and then I would assure them that this is a real union, and I would first—at first they would all give me a talk, and says, "Well, this is—I can't go with you because I am afraid I might lose the job or some boss would come across—"and say—always afraid even to

talk to me at the time. So I had to assure them at first give them a statement and talk to them that there is nothing to be afraid of us, that the Wagner Act is in back of us at the present time.

Q. The what?

A. The Wagner Act. So I assured them always that way, and that is the way, and if they wanted to sign, I gave them one of those applications. If they wanted to sign, it is all right. "So I give it to you next day or a couple of days [fol. 280] later." I did not tell them to go ahead and sign right then.

Q. Do you recall anything unusual happening at the noon hour on or about Thursday, April 15th, of this year?

A. Thursday, April the 15th? Yes. I was going in the noon hour around the dining room from table to table, where I seen my friends, and I talked to them, and Mr. Hargraves and Mr. Dietz, another employee, Dietz.

Q. Dietz?

A. Dietz.

Q. Is that D-i-e-t-z?

A. And a few other foremans got in a bunch, and they were following me around wherever I went, what table I went from table to table.

Q. Who is Mr. Dietz?

A. He is an old employee that I remember, just an employee for the H. J. Heinz Company, and he takes care of, I think it is the cleaning and janitors and so forth.

Q. In charge of the janitresses?

A. That is right.

Q. And who is Mr. Hargraves?

A. That is what they call—I believe they call him a good-will man, and some call him different names. I don't know what he is. A good-will man, I think they call him.

Q. What were they doing at the noon hour?

A. They were following me around. The people were pointing at me while I was talking to them, my friends. They said, "Hey, don't talk to me; there is Mr. Hargraves and Dietz and other foremans. They are waching." Says, "I don't want to be seen talking with you. I might get fired."

Q. Did any of these gentlemen say anything to you?

A. They did not say at the present—at that time.

Q. Was there a union meeting that night?

A. Yes.

Q. State whether or not that was the first public meeting of the Union?

A. It was sort of public from like we would say the grapevine system, at James Street, north side, was the first one.

Q. That is where it was held?

A. That is right.

Q. Who was in charge of that meeting?

[fol. 281] A. I was in charge. I was in charge.

Q. Did anything unusual happen the next day at work, Mr. Novak, to you?

A. Not the next day. The next day was Friday, it was not, but on Monday it was.

Q. What happened on Monday? You mean the Monday following the meeting?

A. That is right.

Q. State what happened?

A. On Monday, at 1 o'clock, Mr. Hayes comes down to the cooperage department.

Q. Who is Mr. Hayes?

A. He is—I believe he is assistant superintendent of the company.

Q. Go ahead.

A. And he come down, and he says, "Frank, Mr. Heinrich, the superintendent, wants to see you." So I followed him and walked up there, and as I come into the office, I seen inside Mr. Koerher, a stockholder of the company.

Q. Who else?

A. Miss Weisman, Lillian Weisman.

Q. And who is Lillian Weisman?

A. She is a sort of superintendent of the ladies of the company. And Mr. Freddy Heinz.

Q. Was Mr. Heinrich there?

A. Heinrich. Mr. Heinrich, pardon me. That is right.

Q. Who is Fred Heinz, if you know?

A. Well, at that time, I don't know exactly. He called himself a stockholder, too. They all admitted they was stockholders, Mr. Heinrich, Mr. Heinz, and Mr. Koerher.

Q. Do you know, is Fred Heinz related to the Heinzes who own the company?

A. Yes, sir.

Q. Do you know what relation?

A. I would say he is a nephew to the Heinzes.

Q. A nephew to Howard Heinz?

A. Yes.

Q. Who is John Kerr at the plant?

A. He is—we call him the big boss of the mixed pickle department.

Q. I believe you stated Lillian Weisman was in charge [fol. 282] of the girls?

A. In charge of the girls.

Q. And Mr. Heinrich is what?

A. The superintendent of the plant.

Q. Of the entire Pittsburgh plant?

A. The entire Pittsburgh plant.

Q. Did you leave your work to attend this meeting, this conference?

A. Yes, I left my work.

Q. Now, will you please relate or tell us, Mr. Novak, in your own words, all that was said and all that took place at this meeting in Mr. Heinrich's office?

A. First, as I come in, Mr. Heinrich was the speaker. He was asking me why—First they wanted to find out why I wasn't at the meeting that Thursday night on the 15th of April, and wanted to find out if I was the leader of the plant. They want me to admit it. I did not tell them at that time that I was the leader, because I was afraid I might get laid off on account of it myself. So I answered the questions he asked me, and he asked me, "Frank didn't we treat you right? Didn't we give you the job back when you needed it?"

I says, "Yes, but you needed the coopers, too."

And I brought up the ideas of the thing that happened, that they done to me. I says, "They laid me off, they gave me a nice wedding present, two weeks off for a wedding, and because I took two extra tickets for a show." They was giving free tickets to the show, for the Heinz auditorium. They have—The company has the own auditorium, and they have shows in there. They was giving tickets away to the employees. Everybody was allowed to get two of them, and I did not know, so I took two more. And then I denied that I took two extra, because I was afraid that—Mr. Hargraves was there, and he says he wanted the two tickets back. It happened about November of last year.

So I says I can't possibly give him the tickets back, because I give it to another fellow wanted to take his two kids along to the show, and his wife. So I sacrificed myself for them, then that fellow would get fired for it. That is the

way we all have the feeling in the plant, that if we admit something or we do tell somebody, why, we know that he might get laid off or fired.

Q. Did Fred Heinz have anything to say at this conference?

[fol. 283] A. Yes, Fred Heinz. Yes. Mr. Heinz said, what I mean, I am trying to organize the plant, the Heinz employees? "Aren't they treated well?"

I says, "As far as I know, we are being pushed around pretty well from one department to another, and our wages are low; and the depression times, why, was cutting down as much as 10, 15 per cent" and now they only go up half a cent, two and a half cents, at a time, most of the time.

Well, because we organized, we was getting five cents, and some of them 10 cents, the difference, because of the union.

So we felt that we needed a union inside.

And Mr. Heinz said, "Why do you want to organize?" He says "We can stop the thing." He says, "Mr. Heinz can go to Europe today and shut the plant down for the next four years, and what are you going to do then?"

I says, "Well, we still have the Government to protect us, anyway." That is all I said to him.

And Mr. Heinrich, then, he said, "Frank, why don't you think of the times when you really needed the job and I gave it to you back? You know, if you are not satisfied with this job, I will give you a better job.

I says—He says, "Why don't you ask for something?"

I says, "Well, I wanted to get a millwright job for a good many years, and I could never get it." It was about eight years that I tried to get a job in there before I even quit in 1929.

So he says, "Well, a millwright job—I think we need one right now." He did not tell me that before, that they need men, in eight years. And so he says, "Well, Frank, we will see you tomorrow. We will see overnight. We will see that Mr. Simpson, the foreman of the mechanical department, if he really needs one, and we will give you that job. But what about if you go and take a job at the boiler room? That is a good paying job. If not that, what about back to the cooper shop, take a foreman's job? Charlie Schwartz, he is the foreman of the cooperage department." And he says 'You can take his job, if you want it." And he told Mr. Koehrer, he says, "Mr. Koehrer, well, what about it? Give

him the job, let him see if he wants the job, see how he is going to do it." That is about 95, 90, 95 cents job. That [fol. 284] would mean an increase of about 30 cents to my hourly wage.

So, well, I says, "No, I don't want that job, because you have to be a pretty good drinker, like Mr. Charlie Schwartz is, to have that job. I don't drink, I don't smoke, and I don't chew, so I feel it would be a physic," and that is the reason I really didn't want that.

He says, "All right, we will see you tomorrow morning—see if we have a job for you in the millwright department."

Q. Then did you leave the conference?

A. Then Mr. Heinrich said, "Well, Frank, it is five to 5:00 now. It is a pretty long time we have been talking to you, for four hours, and I don't know if this is going to do us any good, do you any good or do us any good talking so long. And we feel that we want you to do the right thing. We will promise you to do the right thing, and you do the right thing." So I says, "Well, I have to go back to the department to ring my card up." So I went home then, and I rang my card out.

Q. As you were leaving, did Heinrich say anything to you about the conference, whether you should say anything about it or not?

A. To the employees?

Q. Yes.

A. Well, not exactly that way. He said——

Q. What did he say?

A. I could read between the lines.

Q. What did he say?

A. He wanted to say not to talk to the employees or to keep quiet.

Q. Did you lose any of your pay for being in conference four hours and not working that day?

A. I did not.

Q. You say this occurred on Monday?

A. Monday.

Q. Did you report for work Tuesday morning?

A. Yes, sir.

Q. What time?

A. About a quarter to 8:00.

Q. Did anything out of the ordinary occur at that time?

A. Yes. I come into the time office, and Mr. Hayes was standing there, the assistant superintendent. He says,

"Mr. Heinrich wants to see you again." So I went up to Mr. Heinrich's office.

[fol. 285] Q. Who was there?

A. I got in there. There was Mr. Simpson, the foreman of the mechanical department.

Q. Is he in charge of the millwrights?

A. Millwrights, right.

Q. And was Mr. Heinrich there?

A. Yes. Well——

Q. Anyone else?

A. No, that was all.

Q. Please relate what happened that time?

A. As I come in, Mr. Heinrich says, "Frank, we have a job for you right now." And I sort of looked funny at him. He says, "We got a job for you in the millwright department. We have an opening right now. We need that job bad—we need a man there." And I sort of looked at him, I says, "It is funny you couldn't find an opening for me for eight years and now you can find it over night." Well, that is the way I felt, that he wants to make me to stop the talking to the people around, and make me feel that I shouldn't get the members for our union and see if they want to buy me in some way. And I did not look at him. I just said, "All right." They were talking to me for about an hour there. Nine o'clock Mr. Simpson took me up to the millwright department.

Q. Did you take the job?

A. Yes.

Q. When did you start to work on the job as millwright?

A. That was the next day. That was on the 20th of April around 9 o'clock I started to work. I was working there for about an hour.

Q. Did you work the same day you talked to Simpson and Heinrich or the next day?

A. The same day I was talking to Mr. Simpson and Heinrich in the office.

Q. The same day this conference you are just talking about was held?

A. That is right.

Q. How long were you with Heinrich and Simpson that morning, talking, about how long?

A. Well, the first I was talking, it was about 9 o'clock, from 8 to 9, quarter to 8:00 to 9 o'clock, and then I went with Mr. Simpson to the department. He showed me what to do,

and Mr. Mushka, a fellow in charge of that place, millwright. [fol. 286] Q. Did you get any increase in wages because of this change?

A. Yes.

Q. How much?

A. I got five cents.

Q. Did you again talk to Mr. Heinrich?

Trial Examiner Walsh: How much of an increase did you say?

The Witness: Five cents.

Mr. Kleeb: Sorry.

By Mr. Kleeb:

Q. Did you again talk to Mr. Heinrich on that same day?

A. Yes, I did.

Q. Will you state when and what?

A. Mr. Heinrich come up to the millwright department about 10 o'clock that morning. He left me working there for about one hour, and then about 10 o'clock, he come up and asked me—first he was talking to a fellow named Art Ramick, and he says to him——

Q. Did you hear what he said to him?

A. He talked to him about the union or something that I couldn't get the idea what he was saying.

Q. Well, then, tell us what he said?

A. He come over to me.

Q. In front of you?

A. He sort of raised heck with me why that I was preaching around that he wanted to buy me. I says, "I did not preach to anybody. I did not say to anybody that Mr. Heinrich was to buy me at that time." And so we talked. He talked to me, "Frank, why, when I talked I thought you was an honest man and you speak what you are told to do the right thing." And so Mr. Heinrich—we got into an argument, we went back and forth. Anyway, we sort of raised our voices a little higher, and about 20 men was looking around to us and wondering what was going to start, when we going to start with our fists. Well, we did not, I know when I am right.

Q. Was Heinrich mad or was he smiling when he was talking to you?

A. He was mad.

Q. What did you understand he meant by you doing the right thing?

Mr. Reed: That is objected to as not material. It doesn't make any difference what he though- it meant.

Mr. Kleeb: I think this witness should be permitted to state the impression he received.

[fol. 287] Mr. Reed: You don't testify to impressions. You testify to what is said and done.

Trial Examiner Walsh: Will you reframe your question? The objection is sustained.

By Mr. Kleeb:

Q. When was the second public meeting of your Local No. 325?

A. About a week later at the little Bohemian Hall on Voscamp Street.

Q. That would be April 22, a week later?

A. A week later.

Q. Do you know when there was the first meeting of any kind involving the Heinz Employees Association?

A. Yes.

Q. When?

A. It was the first part of May, or the first week in May in a little church on the corner of High and Alerway, and I was just coming home from work that day, and I walked into—I seen a bunch of fellows, Heinz Employees in the doorway, and I said, "What is going on?" Well, they sort of looked at me; they didn't let me know.

Q. Did you know of that meeting before?

A. I did not.

Q. Did you get in?

A. Yes, I seen it, and I walked in.

Q. Who was handling the meeting? Who was in charge of it?

A. I. C. Bennett. They call him assistant foreman from the can making department, and attorney McDonald, Lawyer McDonald, if you want to call him, McDonald, that is all I know is the name, the fellow that was at the election with us.

Well, as I come in there, there was a good many foremans, time keepers, and foreladies sitting inside the place. And then so——

Q. Can you name, if you know, if you knew any of them? Can you name any of the bosses that you saw?

A. One right in front of me was Mr. Hargraves, the goodwill man, and then the timekeeper, Lillian Thompson from

the preserve department, and the timekeeper from the garage, Tony Huner they call him, and a good many others, but I could not—I know them from the back, see them. [fol. 288] They were the foreladies and foremans were talking in there with a bunch of the rest of the workers.

Q. Who was the door man?

A. It was Joe Greenier.

Q. What job does he have in the plant, do you know?

A. Sort of assistant foreman of the branch house stock.

Q. Was Charles Hibner there?

A. Right, Charlie Hibner, too.

Q. And who was Charles Hibner?

A. Charlie Hibner was another, we will say, a foreman of the mixed pickle department.

Q. Who spoke, if anyone, to the assembled group?

A. Just as I come in there, why, Bennett, I. C. Bennett, spoke. He sort of poked the fellow in the ribs—that was McDonald—and says to announce again that they—I could read what he meant, when he said to him, "Here is the leader from the organization." So he poked him in the ribs, and made him to announce what this meeting was for, and who was calling it.

So McDonald says this, "I want you to understand it again, that this is the Heinz Employees Association, and is not a company union, but is a independent union."

Q. Did Attorney McDonald speak?

A. Yes, sir, he said that.

Q. He made that statement?

A. That is right.

Q. What else took place at the meeting that you recall? Will you please relate it?

A. Well, I went up. I asked that to him, I says, "Isn't that a company union?" and he says, "I just made you a statement right here that that isn't. The Heinz Employees Association is not a company union." I says, "Well, what is this foremens doing in front of me, if they are not, and what have they got to do with it?" And so they sort of didn't want to talk no more to me. And they was nominating some officers in there that they want to make, or representatives of the department, was pointing them out which one was going to be.

So then again I want to get in it, I want to speak, and he wouldn't let me speak. And I was asking a couple of more questions. So the first thing, you know they said that

I was agitating in there, that they didn't want me, but I [fol. 289] wanted to speak, I wanted to ask some questions. So he sort of hit him again in the ribs, and he said to I. C. Bennett, and he says, "The meeting is adjourned."

You will pardon me. Just before that yet was Mr. Hargraves, as I was trying to ask a question he says—he says, "If everybody had my opinion, I would have this man throwed out."

Q. Hargraves said that?

A. Mr. Hargraves said that right in the front. He was standing in the front of me.

Q. And then the meeting broke up?

A. The meeting broke up. We all went out.

Q. Do you remember when the next public meeting of local No. 325 was held?

A. The next public meeting, that was at Jarvis Hall, North Canal Street.

Q. Do you remember when?

A. There was—we usually held them every week, every Thursday. That was the third meeting.

Q. Do you recall when the next meeting of the Heinz Employees Association was held after this one at the church?

A. Yes. There was one at the Carnegie Music Hall.

Q. Do you recall the date?

A. The date? Some part of the middle of May.

Q. Was it on or about May 11?

A. Yes, about that time, May 11th, middle part of May.

Q. Where is the Carnegie Music Hall?

A. On the north side, East Ohio Street.

Q. Were you present?

A. Yes.

Q. Does that hall have a stage? Is there a stage up in front of the hall?

A. Yes.

Q. Who was on the stage in charge of the meeting?

A. I. C. Bennett, and McDonald was the speakers.

Q. Was John Ubrey there?

A. John Ubrey.

Q. Was William Ubrey there?

A. Wiliam. I believe it is Buck Ubrew they call him.

Q. Buck Ubrey?

A. That is right.

Q. Was Frank Kirschner there?

A. Frank Kirschner.

[fol. 290] Q. Was Edward Kranz there?

A. That is right, Edward Kranz.

Q. Is Kranz his right name, his right last name, is you know?

A. No, Grznkowski, something like that.

—. ——.

A. That is right, Edward Kranz.

Q. Is Kranz his real name, r last name, do you know?

A. Grznkowski, or something like that.

Q. This Edward Grznkowski goer by the name of Kranz, however, does he not?

A. That's right. That's all we know him in the factory as.

Q. Who is—And you say Attorney McDonald was on the stage?

A. That's right.

Q. Was there anyone there taking notes of the minutes?

A. Yes, there was a girl from one department who was taking the minutes down of the meeting.

Q. Who addressed the meeting?

A. I. C. Bennett started to address, and then Mr. McDonald was giving the outline of the whole meeting, of how the union should be organized and how they should get members, and the rest of it.

Q. Did you observe people in general who attended that meeting? Did you get a look at them, people who were there?

A. Yes.

Q. Did you observe what kind of workers of the plant made up most of the people in attendance?

A. The kind of people that was most there, I hardly recognize them, because they don't work with me, they work around the plant. I could recognize from the street, in front of the Heinz plant, they were all Heinz office workers.

Q. Will you please relate briefly what took place at that meeting?

A. Yes. We were—We had pickets in the front before that. We wore signs, and we know that there was a company union, so we had signs and parading back and forth. As the meeting start we walked in and then the question was from the audience, people, some of the people, anyway, from the audience, and asking questions of Mr. McDonald, and Mr. McDonald couldn't answer them, so they wanted [fol. 291] to make it quiet and they wanted to—Well, the fellows were trying to get the answers from the questions.

The first thing we know the fellows got angry because Mr. McDonald wouldn't answer the questions, so a fellow called —Mr. Bennett went out the door and got a policeman and told the policeman this man was agitating and to have him arrested, so he took the fellow out. The policeman took this fellow out. His name was Frank Koontz.

And after he was taking him out, well, we felt we all go out, we would see who going along, whoever it will be. So I was walking up the middle aisle, and I came up to the end of the aisle, and I asked the policeman there myself, "Why are you taking him out?" The policeman didn't say nothing, just grabbed me by the shoulders and want to take me along, but he didn't succeed in taking me along, but I walked after him, because I was too big to him, and we walked after him and went to the police station and he was arrested.

Q. Mr. Novak, state whether or not it was the practice of the Heinz Company at the Pittsburgh plant to give its employees free moving pictures and social events and things of that sort.

A. Yes.

Q. What kind of things had been their practice, what kind of things had they given their employees free of charge?

A. As I remember working there before we did not get any movies or banquets. Banquets, they were given at the 57 Club, they called them, but when they had this new auditorium they cut out the movies; just sometimes they was giving you movies for a while. I don't know why. They said they was complaining, through the movies, the theaters of the city of Pittsburgh, so they wasn't giving us so much for a time. For a while they were giving them twice a week.

Q. Movies?

A. Movies.

Q. Free of charge?

A. Free of charge.

Q. And were there any publications by the company for the employees to read?

A. Yes, they was giving us magazines.

Q. Were they free of charge?

[fol. 292] A. Free of charge.

Q. Plays; they were given for the employees?

A. Yes, they was giving us—They gave us checkers to play with, cards, and pool tables, and things of that sort.

Q. Do you recall the strike that occurred May 24th of this year at the plant?

A. Yes.

Q. Prior to the strike did you observe whether the social activities increased or decreased?

A. Yes, they did.

Q. They did what?

A. We had two days, movies, a week. Towards the last part of the week we had three days and two days program, I mean, music, organ recitals; and pool tables and magazines.

Q. Did you notice that the activities increased after the Heinz Employees Association began, and after it started did you observe that these activities increased?

Mr. Reed: That is objected to as very leading and certainly not material. They surely don't claim that the company showered benefits on these people in favor of one union and against the other. It was open to all of them, wasn't it? All these events were open to everybody, weren't they?

The Witness: Yes, but not as many as before.

Mr. Reed: I don't see the materiality of this kind of testimony.

Mr. Kleeb: I think it is very material, if the Examiner please, to show—Subsequent events will show how this company did favor the association.

Mr. Reed: It didn't favor the association.

Mr. Kleeb: I say, subsequent events will show how this company did favor the association; not only favored it, but promoted, and the fact that the Association started, and the events will show the company, through its officers and agents, promoted it and showered upon these employees, at the same time, these increased social events, certainly indicated the desire of the company to have one organization in preference to another.

Trial Examiner Walsh: Objection overruled.

Mr. Kleeb: Will you read that question?

(Last question read by the Reporter.)

A. They increased, yes.

[fol. 293] Q. Was there any change—Did you observe any change over at the Pittsburgh plant following the Labor Board election June 8, 1937, when the A. F. of L. union won?

Mr. Reed: What kind of a change?
Mr. Kleeb: I haven't finished.

A. Yes.

By Mr. Kleeb:

Q. With reference to these social activities, whether they increased or decreased?

A. No, they stopped the movies, stopped 57 Club. They stopped the pool tables. All they do now—They still have playing cards, and the cards, they don't get no more new cards. When they were out, well that's all.

Q. How do you know that?

A. Because I have played them.

Q. How do you know they are not going to give any more cards?

A. Because they won't give us any new cards.

Q. Do you know that they won't? How do you know that they won't give you any more cards?

A. Because we asked for them.

Q. And you were refused?

A. Refused.

Q. Did the company, through bulletin or otherwise, give you employees or you any notice of why they cut out all this stuff?

A. No.

Q. Did they tell you why?

A. No.

Q. No reason has ever been given?

A. No reason.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. You are the president, are you, of the Union?

A. Yes.

Q. And you said, I believe, that you presided at the first meeting that was had, that the union had?

Let's refer to your union as the union and the other as the association, and it will make it a little easier to ask questions.

Now, when you went to the office, the day that Mr. Hein- [fol. 294] rich wanted to see you, what did he say to you when you first went in?

A. He asked me why I went to that meeting last Thursday night.

Q. Isn't it a fact that he told you that the girls were complaining that you annoyed them in the lunch hour and harassed them, to try to get them to sign cards?

A. No.

Q. Wasn't that what he told you?

A. No.

Q. He didn't ask about that? Was Miss Weissman there?

A. Yes.

Q. And Fred Heinz and Mr. Heinrich?

A. That's right.

Q. And you say he did not tell you there were complaints coming in about your going around and trying to make people sign cards?

A. He did not say that.

Q. You never heard that?

A. Never.

Q. You had been going around to try to get the girls to sign cards?

A. Yes, sir.

Q. Didn't he tell you he didn't want any trouble amongst the employees; whatever was wrong he wanted to know about?

A. He didn't say anything about trouble, but he said to do the right thing.

Q. He said if there was anything wrong about the plant he wanted to know about it, didn't he?

A. Yes. He said, "Come up to our door, they are open."

Q. And then you told him first that you didn't think you had been treated right, didn't you?

A. Yes.

Q. Yes. And you thought you ought to have a better job. You told him that, didn't you?

A. I didn't say about the better job.

Q. Well, you thought you ought to be transferred to another department?

A. Not even that.

Q. What did you tell him you thought you ought to have?

A. I shouldn't be shoved around in the department from one to another department. That's what you mean.

[fol. 295] Q. You were the one that brought up the question first; you didn't think that you were treated right; weren't you?

A. No, I was not.

Q. You just said that a little while ago in your direct examination.

A. I said for myself.

Q. Yes. And then you told him what you thought was wrong about your own treatment, didn't you? You told him what you thought had been unfair to you?

A. Yes.

Q. About your employment?

A. That's right.

Q. And then is when this discussion came in about these tickets, wasn't it?

A. Tickets?

Q. Yes. You said something about taking two tickets you shouldn't have taken.

A. That's right.

Q. That was something that happened long before?

A. That's right.

Q. But you had been criticized about it, hadn't you?

A. By Heinrich.

Q. Yes. And so you were bringing up to him as a complaint a matter that had happened long before, where you had been criticized, weren't you?

A. After all, we want to get good working conditions; not what happened. We know what happened six to eight years ago.

Q. What I am getting at is this matter of your taking tickets was nothing that happened that day you were talking to Heinrich; that was something that had happened in November before and you had been criticized about it?

A. Yes.

Q. And you brought it up as one of your grievances?

A. Mr. Heinrich brought it up, too.

Q. Who brought it up first? You mean he referred to the fact that you had trouble about those tickets in November, before, isn't that right?

A. We don't know exactly how that is. We got into the hall, arguments about things, how we are treated.

Q. How you were treated?

A. How other employees were treated.

Q. You were principally talking about the things you [fol. 296] thought hadn't been fair to you?

A. Yes, fair to me.

Q. And you said you would like to go into the millwrights' department.

A. I did not say that.

Q. Who said that?

A. Mr. Heinrich asked me, what kind of a job do I want, and he said, "Do you want boiler room or some other job, or a foreman's job?" And I said, "I have machinery and I am interested in a millwright. I have some machineries at home, and if it's all the same I would like to millwright."

Q. You didn't think he was offering you a job as a foreman, did you?

A. Yes, because Mr. Koehrer said that.

Q. Go ahead.

A. So, talking about the job, "Sure," he said, "do you want the job?"

I says to Mr. Koehrer, "How about giving the job to the cooperage department as foreman?"

Q. Foreman?

A. Yes, and Mr. Koehrer said, "It's all right, go ahead." I didn't like to go ahead and stop, because he said something like, "It's Mr. Heinrich's idea."

Q. You were offered this job as a foreman? You could have had that?

A. Could have had that if I wanted it.

Q. But you took the millwright job?

A. Millwright job.

Q. What other job were you offered?

A. Boiler room.

Q. Why didn't you want to take any of these other jobs, foreman or boiler room?

A. I told him I am not a drinker. They drink in the cooperage department. You have to drink. And the boiler room is too dirty, I am not interested in the boiler room. I was interested ~~in~~ a trade job, so I take that.

Q. Why do you have to drink in the cooperage department? The barrels leak?

A. They have drinking foremen.

Q. They have drinking foremen. You turned down the foreman job because you didn't want to drink, and you

turned down the boiler-room job because it was dirty, and you took the millwright.

A. I had to take something.

[fol. 297] Q. Didn't you think you would be criticized for changing your job when you had just become leader of this union?

A. No. The idea was to make me stop—He says, "Do the right thing." He meant, Don't go out and——

Q. "He meant". He didn't say anything of the kind.

A. He said, "Do the right thing."

Q. He didn't say to you not to solicit people for the union or to give up the union or to do a thing did he?

A. Not a——

Q. He gave you a job you wanted because you said you had machinery at home and you were working at that kind of work at home, didn't he?

A. Why didn't he give me it eight years ago.

Q. Have you asked for it before?

A. Yes.

Q. Didn't you make the statement that day you had not asked for another job because you thought it was no use? Didn't you say that to those people at that time?

A. What job?

Q. Didn't you say to those people that day you had not complained or asked for another job because you thought there was no use asking?

A. To who did I say that?

Q. To the people in the room that day; Mr. Heinrich.

A. Well, I says about—He was asking because I know it was no use, I wasn't going to get it.

Q. *Who* did say that, then?

A. Yes, I said no use of asking because I am not going to get it.

Q. Now, the job, you got paid no more than the men were then going to get in the cooperage department?

A. Oh, yes, I did.

Q. They got a five-cent raise in the cooperage department at that time?

A. No.

Q. You say you got more money as a result of the change of the job?

A. That's right.

Q. How much did you get in the new job?

A. Five cents more.

[fol. 298] Q. How much in cents per hour?

A. Five cents an hour more.

Q. I don't want "more". How many cents an hour did you get for your wages?

A. 57½ in the cooperage department and 62½ at the millwright job.

Q. In your new position you were paid 62½ cents an hour?

A. That's right.

Q. Do you say that the people in the cooperage department did not, at the same time, get 62½ cents an hour?

A. No.

Q. They didn't get a raise to 62½ cents an hour at the same time?

A. No.

Q. You are sure of that?

A. I am sure of it; the fellows tell me. I have no way of checking up, but they have been told not to tell anybody how much raise I get.

Q. You were told not to tell anybody how much raise you got?

A. Yes.

Q. You said that Heinrich, you said before you didn't say that, but you read it between the lines.

A. About the raise? No, I didn't say that.

Q. What was it you said you read between the lines?

A. Between the lines meant to go ahead and solicit members.

Q. Not to go ahead and solicit members?

A. Yes.

Q. Well, nothing was said like that, was there?

A. He said to do the right thing.

Q. So you took this new job and then Heinrich came to you the next day and said that he heard that you were saying that you had been bought off, or something like that, didn't he; tried to buy you off?

A. Yes.

Q. And you said you hadn't said anything like that?

A. Yes.

Q. You didn't say anything like that, did you?

A. No.

Q. And you didn't think that, did you?

A. No—I did think of that, yes.

[fol. 299] Q. What did you say "No" for, first? Did you think somebody was trying to buy you off?

A. Yes.

Q. You thought they were trying to buy you off by your being transferred to a job you asked for, did you?

A. No, to the foreman job.

Q. You thought they wanted to buy you off?

A. If they gave me the foreman's job, yes.

Q. But if you took a millwright's job they weren't buying you, is that it?

A. Still, yes.

Q. You thought they were buying you by shifting you to the millwright job, and you took it?

A. Yes.

Q. And you didn't stop your activity; you kept right on soliciting?

A. That's right.

Q. Nobody interfered with you or stopped you, did they?

A. Yes.

Q. When?

A. Mr. Hargraves.

Q. When was that?

A. About a week, two weeks, later, he stopped me when I went through one of the departments.

Q. That was during working hours?

A. My own time; noon hour.

Q. But when the other men were working?

A. No, bean-filling department nobody works in the noon hour.

Q. What you did then was you took a different job, fearing that the company was buying you, but you didn't intend to be bought. You intended to take the job, is that it?

A. Took a job because I was working hard all my life down there with the company, so I might as well take a better job.

Q. You thought you were selling out, didn't you?

A. No, I was not, because I directed the meeting and the following meeting, so I was not selling out.

Q. You still regard that as an effort to bribe you, is that it? You regard that incident as an effort to bribe you to get you to sell out?

A. I don't speak so good English. You had better talk [fol. 300] plain English to me.

Q. What language do you speak?
A. You can't understand that.
Q. What language is it?
A. Slovenian.
Q. What language does Kracik speak?

Mr. Kleeb: I object to that as immaterial.
Mr. Reed: The witness expressed difficulty——
Mr. Kleeb: It has nothing to do about another witness.
Trial Examiner Walsh: Objection sustained.

By Mr. Reed:

Q. Well, I guess I will talk to you in English and do it slowly.

A. Plain English.

Q. Do you still regard the changing of job that you got from the cooperage department to the millwright as an effort by the company to bribe you?

A. Yes.

Q. You do. Well, you didn't tell anybody about it?

A. I did not.

Q. Why didn't you tell them about it?

A. Why, because I was still tending to our meetings and I didn't feel I was selling out.

Q. Now, none of these people that you talked to, you spoke about going through the lunchroom and going from one table to another and telling them about the meeting—none of them lost their jobs, did they?

A. They were discriminated, afterwards, as I understand. We had grievances, we had ballots, and they were all, as I know, on the carpet; they were all, by the foreman, Mr. Hargraves, and Mr. Heinrich, and they were talked to and asked why if they were at the meeting that they were treated right the same way as I was.

Q. You are telling what somebody else told you?

A. Yes.

Q. Do you know of your own knowledge of anyone who lost his job or got fired because of his talking with you about that union?

A. Well, not at that time.

Q. No. You don't know of any now, do you?

A. Now?

Q. Yes.

A. They have a few that feel that they have been discriminated on account of the union.

Q. You don't know of any that lost their job as a result [fol. 301] of your activities?

Mr. Kleeb: I object to this question as irrelevant and immaterial.

Trial Examiner Walsh: Objection overruled.

By Mr. Reed:

Q. Now you may answer. Do you know of anyone today that has lost his job as a result of your talking to them about the union?

A. Talking to them about the union, but being in connection with the union we have a few men who were fired already.

Q. You have what?

A. We have a few fellows we feel, because they were with the union, they were fired on account of that, because it didn't show before the union was in there they were not fired for such little things like there was one particular place, three men got fired for taking ice cream on the company's time, and so forth, and other fellow, different things they were fired for, I mean laid off for.

Q. Well, every man that's laid off and fired thinks there is something wrong when he is laid off or fired?

A. Yes, but it did not show that way before the union. Before the union they gave them notice it must not happen again.

Q. This night you dropped into the meeting, you didn't know there was a meeting of the association that night?

A. No.

Q. You were just going by the church and saw it and dropped in?

A. I seen the Heinz employees, some fellows, and walked in.

Q. And Mr. McDonald and Mr. Bennett were on the platform holding this association meeting?

A. That's right.

Q. And you stood in the back?

A. That's right.

Q. And Mr. Hargraves was there?

A. Right in front of me, yes.

Q. As the man you call the good-will man?

A. That's right.

Q. His business is looking after the social activities of the employees?

A. His business is to go out to the houses, to find out what houses; if they are well-to-do they don't get no raise, [fol. 302] and about free bread, and that's the thing.

Q. He goes to see if people need anything, and when there is a death in the family, and that sort of thing?

A. Yes.

Q. He has no power to hire or fire anybody?

A. I tell you one thing, he tried to fire me a couple of times.

Q. But didn't succeed?

A. No. I talked myself out of it.

Q. That is not his job, to hire or fire anybody, or——

A. He got me laid off. Mr. Heinrich was the one talked him off for those two tickets.

Q. I think you can answer my question. It is not his job to hire or fire anybody, or manage any department, is it?

A. Right now, no. He is a foreman, now, of some bottling washing, so whether that gives him privilege to hire and fire—No, it doesn't; not hire or fire.

Q. Are you evading the question, or do you want to answer? At the time we are talking about did Mr. Hargraves' job involve hiring and firing, or managing any department? Can you answer that?

A. Not that; he was not.

Q. Why didn't you answer it that way in the first place?

A. Because we know he has a connection in there. He goes and tells Mr. Heinrich, and his word is as good as Mr. Heinrich's to fire anybody.

Q. You are here to answer questions of fact, not what's in your mind.

You walked into this meeting when you were the president of a rival union, and began to ask questions from the rear of the room, didn't you?

A. Yes, I asked questions and I want to see if it is the righ- kind of a union. If it was, I go in and join myself.

Q. I didn't ask you why. Did you go in this meeting, stand in the back, and begin to ask questions, when you were the president of a rival union; did you or didn't you?

A. I asked questions, sure.

Q. When Mr. Hargraves said, "If I was running this meeting I would have that man thrown out?"

A. That's right.

Q. That was the extent of his remarks?

[fol. 303] A. Yes.

Q. That's all he said, wasn't it?

A. Yes, that's all he said.

Q. You thought that was proper, for you to go in and break up their meeting, did you?

Mr. Kleeb: I object to the form of the question.

Trial Examiner Walsh: Sustained.

By Mr. Reed:

Q. You thought that was proper, for you to go into that meeting and start to ask questions, when you knew it was a meeting of the other association, did you?

A. Yes.

Q. You saw some timekeepers there?

A. Yes.

Q. Don't you know that timekeepers are eligible to belong to the association?

A. Yes.

Q. And clerks are eligible to belong?

A. Yes.

Q. They had a right to have whoever was eligible, have membership in their meeting, didn't they?

A. Yes.

Q. The timekeeper doesn't fire anybody, does he?

A. No.

Q. Timekeepers were permitted to vote in the election that was held, weren't they?

A. Yes.

Q. So that you see nothing improper in the fact that there were timekeepers at that meeting?

A. Well, they are right next to the boss. That's the way I think.

Q. Well, you think that association has the right to decide who its members are? That is not any business of yours, is it?

A. No.

Q. They had another meeting at Carnegie Hall that you testified to, and you said you were picketing that meeting. Why?

A. Because our members felt it was a company union, and we want to show them, explain to them that it was a company union.

Q. Doesn't your organization think that the other organization has a right to have peaceful meetings?

A. Yes.

Q. Then why were you picketing it?

[fol. 304] A. We just want to make them understand it, because lot of them don't know what that meeting was about.

Q. And the way to do it was to picket out in front of their meeting?

A. To show them on our cards what that meeting was.

Q. And then you all filed in the meetings?

A. That's right.

Q. And began to agitate, as you said?

Mr. Kleeb: I object.

Mr. Reed: I am using his own word.

Mr. Kleeb: He didn't say they began to agitate, Mr. Reed.

By Mr. Reed:

Q. What did you say about agitating?

A. That's what Mr. Hargraves said at the other meeting; I am an agitator.

Q. You said at this meeting they were agitating. Who was agitating?

A. Nobody was agitating. The paper said they were agitators, yes.

Q. Do you say you didn't say in your direct testimony just a little while ago that you were agitating at that meeting?

A. No.

Q. You did not?

A. I did not say that.

Q. I will show the record when it comes transcribed. What did you do when you went into the meeting?

A. I went in the front aisle and sat up there.

Q. You knew it was a meeting of the rival organization?

A. You call it a rival.

Q. The association is different than your union, wasn't it?

A. Yes.

Q. You and your members picketed the meeting, then went in and sat up front; front seats?

A. Not exactly front, it was the middle part; all over the place. I don't know who they were.

Q. What did you do that for?

A. Because we were Heinz employees.

Q. And you had a right to go into the other meeting?

A. We have a right to go in any meetings. They had [fol. 305] a right to go to our meetings, too.

Q. The Heinz Association members can attend your meetings, can they?

A. Yes, they can.

Q. Did any of them ever try to do it?

A. Yes, they have, lots of them.

Q. You started asking questions after you and your gang got in there?

A. Yes. I didn't ask any questions.

Q. Somebody did; started to make a disturbance?

A. Not a disturbance. They asked a question, and Mr. McDonald would not answer them.

Q. And ultimately a policeman came and took one of the members out, and you; is that right?

A. That's right.

Q. There wasn't any complaint against the company about that meeting, was there? That was a proper meeting of the employees of the company, wasn't it?

A. Complaint?

Q. I mean, you apparently thought there was something wrong about the meeting at the church because you saw Mr. Hargraves there. Did you see any foremen or superintendents at the Carnegie Hall meeting?

A. Yes, assistant foremen were there.

Q. Well, assistant foreman is a working man, isn't he?

A. Yes.

Q. Gets paid by the hour, doesn't he?

A. Makes no difference. Lots of foremen get paid by the hour.

Q. Well, isn't an assistant foreman eligible to belong to your union?

A. No.

Q. He is eligible to belong to the association, isn't he?

A. That's right.

Q. And they have a right to decide who their members are, don't they?

A. He can belong to the association, but not ours.

Q. You don't complain because they had somebody at the meeting, somebody that was eligible to belong to their association, do you?

A. No.

Q. They had a right to have them there?

A. Yes, they had a right.

[fol. 306] Q. And the assistant foremen were permitted to vote at the election held by the Labor Board?

A. Unless we prove they are supervisors.

Q. If they were merely assistant formen they were entitled to vote and did vote, didn't they?

A. Yes.

Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. After you took this job of millwright——

A. Yes.

Q. —from Mr. Heinrich and Simpson, following your conversation with them, did you do anything to sell out your union?

A. No.

Q. Did you favor the company after you got that job?

A. No.

Q. Did you remain active as you always had been in your union?

A. Yes.

Q. Were you the president of your local?

A. Yes.

Q. Are you now president of your local?

A. Yes.

Q. What was some of the wording of some picket-line signs of this May 11th meeting of the association at which your people were? What did it say about this meeting?

A. That this was unfair; that it was unfair to the A. F. of L. local; and the Heinz Employees Association was a company union.

Mr. Kleeb: That's all.

Examination.

By Trial Examiner Walsh:

Q. Mr. Novak, on the occasion of these Employees Association meetings you have been testifying about, were you a member of the association?

A. No.

Q. Who are members? How do you become a member, or do you know?

A. Employees Association?

Q. Yes.

[fol. 307] A. You go and ask one of the foremen, and you can get in.

Q. You have to take some step in order to come in; to be a member of this association?

A. Not exactly. You can get one of their representatives and join the union.

Q. For example, a man is not a member of the association because he works for the Heinz Company?

A. No.

Q. You have to take some step; the employees have to apply for membership?

A. Yes, you have to go in——

Q. So that you entered these meetings without being a member of that association at that time?

A. It was an open meeting.

Q. How did you know it was an open meeting? What do you mean by that?

A. The doors was open. They invite you any time that you want to.

Q. Doors are open to many meetings in the sense they are unlocked, but they may still be private meetings.

A. The first two meetings were not private.

Q. How did you know they were not private?

A. Because everybody was allowed, as long as he was a Heinz employee.

Q. How do you know that?

A. We tried it. We went up to the door and was given a ticket.

Q. You discovered it when you went in?

A. No, before that. The fellows came out and told us.

Q. Some association official came out and told you you were welcome?

A. That's right.

Q. On the occasion of your picketing?

A. That's right.

Q. Can you recall any of the questions which you asked or those who were with you asked of the chairman of this meeting; questions other than were objected to?

A. Which meeting do you mean, Carnegie Hall?

Q. When somebody was arrested?

A. They asked—I don't exactly know. I asked them if it has an affiliation with the A. F. of L. or if connected with C. I. O. or anything of that sort, and Mr. McDonald [fol. 308] did not answer the question. They wanted to find things out. Different things was brought up——

Q. Didn't you—Didn't answer your question, and then what occurred?

A. It occurred that the fellows in there felt they didn't get no answers to their questions, what they do then? They will have to discuss our question more.

Q. What did they do?

A. They just asked it.

Q. Kept on asking the same question?

A. Kept on asking the same question, but Mr. McDonald wouldn't answer.

Q. And it was then the policeman came down?

A. Policeman came down to stop them from asking questions.

Q. Earlier in your testimony on the cross examination here you were asked whether or not you had ever been offered or whether you had ever asked for another job prior to this occasion on which you *you* were given a millwright job. Did I understand correctly that you had not, in the period of time you have been employed there, asked for another, a better job?

A. Yes, I did ask for a millwright job for eight years before.

Q. Eight years before you asked for it?

A. Yes, I was asking them off and on all the time.

Q. Asking whom?

A. Mr. Heinrich.

Q. And the reply always was that there was not one?

A. There was one.

Q. That there was no job open, is that right?

A. That's right.

Q. Then there is some confusion. The cross examiner asked you whether you had any reasonable belief or whether you thought in your head there was no job available for you, you had reason to believe there was no job for you because——

A. I had reason to believe because before there might be a job open though but not for me but then this meeting was held, and it was Monday Mr. Heinrich offered a job and next day I got it. Before that I didn't get it. That's why I feel that the job was given to me.

Trial Examiner Walsh: Do you have anything further?

[fol. 309] Mr. Reed: Yes; that suggested a new line to me.

Recross-examination.

By Mr. Reed:

Q. You say you had asked for a job eight years before, a better job?

A. Yes.

Q. Eight years before that you were a prize fighter, weren't you?

A. Eight years before that?

Q. You weren't working for the Heinz Company?

A. I was an amateur boxer; eight years before that was 1928.

Q. And you hadn't been there continuously that eight year period; you had been off, hadn't you?

A. I was off for three years; that's right.

Q. Off how long?

A. Three.

Q. And you hadn't renewed any request for a better job in that period?

A. When I come back, yes.

Q. When was that?

A. Around 1934.

Q. 1924?

A. 1934.

Q. You did ask for a better job then?

A. Yes.

Q. Whom did you ask?

A. Mr. Koehrer and he was supposed to go and ask Mr. Heinrich for a job. He said, "Frank, I don't know," he

says, "we will see what I can do about it."

Q. Well, of course, the company had nothing against you then for any union activities. It wasn't thought of at that time, was it?

A. I asked so many times for a job, I thought, "Why I was getting it over night," I don't know.

Q. If you felt the company had anything against you it wasn't the result of any union activities, was it?

A. How then?

Q. I understand you are testifying you were discriminated against because of union activities. There were no union activities in 1934 or any time that might have led them to give you a job?

A. I was given a job when this union activity was started.

Q. You said that some official of the Association came out [fol. 310] and invited you into the meeting. Who was that?

A. Not invited me. He was standing at the door and I asked him what was going on at the meeting and he says, "I have a meeting in here."

Q. Who was that?

A. Joe Greenier.

Q. Nobody came out and invited you in the meeting?

A. No, not them. I see some of my fellows I work with, so, naturally, I want to see what was going on.

Q. You just pushed your way in?

A. I was a Heinz employee the same as he was. I was allowed to go in there, wasn't I?

Q. So you just pushed your way in?

A. Of course I went in.

Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. In 1934 when you returned to work for the company, about how many times, if you can recall, did you ask for this different or better job?

A. I asked Mr. Koehrer about two or three times.

Mr. Kleeb: That's all.

Mr. Reed: That's all.

(Witness excused.)

(Discussion had in regard to tentative time of meeting and adjourning the hearing.)

JOSEPH MARAK, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. What is your name?

A. Joseph Marak.

Q. Where do you live?

A. 1416 Claim Street, the north side of Pittsburgh.

Q. Are you now employed at the Pittsburgh Plant of the H. J. Heinz Company?

A. I am.

Q. How long have you been employed there, approximately?

A. The last time, the last one, was September, 1935. I [fol. 311] had worked there previously.

Q. And in total, approximately, how many years?

A. Approximately, altogether, I guess four years; total time I worked.

Mr. Reed: How long?

The Witness: Four years, total time.

Q. What department are you in?

A. I belong to the can room, but at the present time I am not working there. I am working as a shear man, but I am not in that department at the present time.

Q. Are you working in another department?

A. I am. I have been for the past, oh, about the past two months.

Q. But prior to that you were shearing the tin in the can room?

A. Yes, and I am returning to that job tomorrow.

Q. That is your regular job.

A. Yes.

Q. And you were working there shearing tin in the can room all of this year up until this recent transfer?

A. Yes, I have.

Q. How many employees work with you in this room?

A. Well, this can room is a big room where the whole process is finished but on the shearing end of the tin, where the tin is sheared, there are seven men that do the process of shearing the tin.

Q. And you were one of those seven?

A. I am one of the seven.

Q. From whom did you receive your orders in the morning when you start to work?

A. From Mr. I. C. Bennett, who is called John.

Q. Do you know personally whether he has a title like foreman or supervisor?

A. Well, he wears the customary foreman's uniform.

Q. And does he give orders to the seven men?

A. He does.

Q. Who called you to time if anything goes wrong with the work?

A. I. C. Bennett.

Q. Does Bennett call you for mistakes?

A. He does.

Q. Does Bennett himself shear tin as a general practice?

A. No, he does not.

[fol. 312] Q. Does Bennett merely supervise or is he engaged in production?

A. He supervises the work.

Q. What is the nature of his work in general?

A. Well, the nature of his work, he does grinding of knives, occasionally, but he has a helper, also, helping him with that job of sharpening the knives so as to cut the plate tin, but the object of his work, he sees if the tin is out of square or in any way wrong, he comes and tells you about it. He comes and tests your tin, maybe two or three times a day, to see if your tin is in square for the process, for the work.

Q. Does he ever shear tin?

A. Only if he is fixing a machine and he may put a sheet or two of tin through, but he doesn't shear tin.

Trial Examiner Walsh: I didn't understand the answer to that question. When does he shear tin?

The Witness: If he is sharpening the knives of the machine, he will run a sheet of tin through, but otherwise not.

Q. What do you call this job of watching over the machine? What is that called, that Bennett does?

A. I would call him an assistant foreman's job.

Q. Do any of these seven men attend to seeing the machine is in proper order for shearing tin, or is that Bennett's job?

A. We report it to either Bennett or the fellow that works for Bennett.

Q. Then the machine is corrected?

A. Then the machine is corrected. We do not correct it.

Q. Would you be able to estimate, from your working in that department, how much of Bennett's time is spent in general supervising, and how much is spent in correcting these machines?

A. I would say that the general supervising, seven out of the eight hours, and that is spent supervising, and one hour a day correcting the machines and then it varies at different times.

Q. How many assistants, if any, does Bennett have?

A. He doesn't have any assistants, but there is one fellow works under him that does the same work he does, sharpening knives.

Q. Do you know his name?

A. Albert Dietrich.

Q. Does this assistant do any tin shearing?

[fol. 313] A. Occasionally, yes.

Q. Not regularly?

A. Not regularly. Not when I was up there, anyhow.

Q. Do these seven men you refer to make up the entire can department, or just the shearing division?

A. Just the shearing division. There are two girls that work with the men on this process.

Q. What other divisions of the can department are there?

A. Well, there is the shearing end, the body makers, the capping machines.

Q. Is there a lining department?

A. A lining cans, that's the can.

Q. So that the can department is made up of the shearing department, the body making department or division, the capping division, and the lining division?

A. Yes.

Q. Is there some person, if you know, in charge of each of these divisions responsible for the work of that department?

A. Yes, in the body makers, Walter Weiss and a fellow by the name of Kearn takes care of the body makers. These liners and cap punching machines are in charge of a floor lady. They also have another floor lady on the other end of the room that takes care of where the cans go and we have I. C. Bennett in charge of our department and there

is also a machine shop in one end of the department and that is where the machinists are.

Q. Is there somebody in charge of that department?

A. Yes, Fred Gerhard.

Q. Is there a general foreman over the entire can department?

A. Yes, there is.

Q. Who is that?

A. Mr. Bill Spangenberg.

Q. Do you know whether I. C. Bennett is an official of the Heinz Employees Association?

A. I do know, he is the president of the Heinz Employees Association.

Q. And it's the same I. C. Bennett?

A. Yes, he is known to us working fellows as John.

Q. Is it a fact, Mr. Marak, that bosses or supervisory employees wear a uniform at work different from that of the ordinary production worker?

[fol. 314] A. Yes, it is.

Q. What kind of a uniform do the supervisory workers wear?

A. The majority of them, the white pants and white shirt and a special white cap.

Q. Does Bennett wear such an outfit?

A. He does, identically the same as the foremen.

Q. These seven men, including yourself, are on piecework?

A. We are.

Q. Is Bennett on piece work?

A. He is not.

Q. Who watches your piece work records and who takes them off?

A. Bennett takes them from us at the end of each working day.

Q. Who is responsible for your piece work records?

A. Bennett takes the piece work from us at the end of the day and he marks down on the sheet where he takes them and the next morning—to the timekeeper in the office—and the next morning she makes the necessary arrangement to send them to the office to the timekeeper department.

Q. How many timekeepers are there?

A. There have been two.

Q. And Bennett turns the records to one of those timekeepers?

A. Yes.

Q. Do you recall the strike at the Pittsburgh Plant May 24th of this year?

A. I do.

Q. And prior to that time when did you first directly hear about the Heinz Employees Association?

A. It was sometime after the—around the first part of May, I imagine, approximately.

Trial Examiner Walsh: We are beginning a new line of testimony. Suppose we recess until 1:30. Excused until 1:30.

(Thereupon, a recess was had until 1:30 p. m.)

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 o'clock p. m.)

Trial Examiner Walsh: All right, Mr. Marak, the hearing will come to order.

JOSEPH MARAK, having been previously duly sworn, tes- [fol. 315] tified further as follows:

By Mr. Kleeb:

Q. Mr. Marak, at the conclusion of the morning session I asked you this question which I wish you now to answer. Before the strike, May 24th of this year, when did you first directly hear about the Heinz Employees Association?

A. It was in May. It was around the early part of May when I first heard of the Heinz Employees Association.

Q. State what occurred when you heard about it.

A. I had heard a lot of talk throughout the factory, now, that being as an outside union was starting to organize, that they also had an organization on the inside that was starting to organize known as the Heinz Employees Association.

Q. That was the general rumor, around the factory?

A. That was the general rumor around the factory. And the way I personally got contact about this was in this manner. On or about, oh, I estimate around a week of May the 11th, right around in that time, or maybe, a little later—no, it was right around that time, I guess, that I was

working on my job as I always had been, and I imagine it was around, well, it was before noon, in between—in between 10 and 12.00, right around those hours, a fellow come over to me. I noticed the men were leaving their jobs one at a time. A fellow came over to me and said, "Listen, Joe," he said, "somebody wants to see you back in the tin room." And I said, "Wants to see me back there?" He said "Yes, right away."

Q. Who was this fellow that approached you, do you know?

A. I can't recall which one. It was one of the shearmen.

Q. One of your fellow workers?

A. One of my fellow workers, yes, sir.

So I went back in the tin room. This tin room was a scrap room where they dropped scraps down in the box car, and I had went in there, and I had seen this Fred Gerhard, and he is the man that was in charge of the men in the mechanical department, this machine shop. And I said, "Hi, Fred." He said, "Hi Joe." He said, "I guess you know what I want you for." I said, "No." I did, but I acted dumb, and I didn't let on. He said, "Now, that you know these both organizations are being run here," he said, "we started an organiza-
[fol. 316] tion here for the good of the employees." And I said, "Yes." And he said, "Well, now, all you have to do is sign your name down there," and he handed me a paper that had several names on. And it said, "We, the undersigned—" it continued. "We, the undersigned, wish to get into the Heinz Employees Association."

Q. Did he show you that paper?

A. He did, yes.

(Thereupon the document above referred to was marked as Board's Exhibit No. 7 for identification.)

By Mr. Kleeb:

Q. I hand you Board's Exhibit No. 7 for identification. Will you look at it, please, and state if that is like the paper you saw, as to the wording, I mean?

A. Yes, sir, this is the exact—this is the same paper, the same heading that I had been handed.

Q. And you read the heading on the paper that Gerhard had?

A. I did.

Q. And you have read the heading on Board's Exhibit No. 7 for identification, which you have in your hand?

A. Yes.

Q. And, as you recollect it, they are the same?

A. It is. It is the same.

Mr. Kleeb: I wish to offer it in evidence.

Mr. Reed: I object to it. This is in no way binding or affecting the company. The company has nothing to do with this. It is a membership roll among the employees.

Mr. Kleeb: If the Trial Examiner please, the record will show that the company knew a lot about this, and not only knew about it, but it fostered and promoted membership in this association.

Trial Examiner Walsh: May I see it?

(The paper writing referred to was handed to the Trial Examiner.)

Trial Examiner Walsh: This may be received. The objection is overruled.

(The document heretofore marked "Board's Exhibit No. 7" for identification, was received in evidence.)

[fol. 317] By Mr. Kleeb:

Q. Go on and relate what else occurred with Mr. Gerhard about this paper.

A. And as I have said, Mr. Gerhard said, "You know that both organizations are going on in the Heinz Plant among the employees." I said, "No." And he asked me to sign this. He asked me to sign this slip of paper to apply for membership. And I said, "Well, Fred, I haven't made my mind up as to what I intend to do, but I will let you know later on." He said, "Well, you certainly did have enough time by now to know what your mind is, one way or the other." "Well," I said, "I haven't as yet made my mind up. I want to see what the other fellows are all going to do, and then I will let you know what I am going to do." He said, "Well," he says, "it is about time you made up your mind to see what you are going to do." And I said, "Well, that is my business." And I walked out of the room.

And around dinner time, a bunch of fellows getting together, and they said, "Gee, this thing is getting to be a pretty shaky affair." They were sitting in the dining room

talking. They said—Well, and we started talking, and the fellows said, "Well, I guess the best thing to do will be we will all sign this paper and we will protect our jobs. There will be no possible way of getting picked on because we did not sign it."

So I went up after dinner, and I said, "O. K., Fred, I will sign the slip," and I had signed my name to the slip.

Q. Did you observe any other signatures on the paper?

A. I did, yes.

Q. Is this Fred Gerhard the Fred Gerhard to whom you have previously referred in your testimony?

A. Yes, it is.

Q. Do you know the nature of Gerhard's work? Do you? "Yes or no." Do you know the nature of his work?

A. Yes, I do.

Q. What is the nature of that work?

A. Well, now, the nature of Frank's work is if any of the capping machines go wrong in any form whatsoever, that is, the machines that cap out the lids for the cans, when they go wrong in any way whatsoever, the forelady takes the defect in the tin to Fred and shows him what is going on, and then Fred looks it over and gives it to one of the men who is working under him, and the man goes and re-[fol. 318] pairs it just as to what part is wrong on the machine. He sends someone on to repair it, but he does not wear the foreman uniform. He wears the regular employees' uniform.

Q. Gerhard does?

A. Gerhard does.

Q. How many employees, approximately, are there in the machine shop?

A. Oh, approximately 20.

Q. When did this thing occur? During your working hours?

A. Yes, it did. It occurred between the hours of 10 or 12, when he had asked me to sign this paper.

Q. To your knowledge are these men who work in the machine shop or the machine division of the can-making department responsible to Fred Gerhard?

A. Yes; in a way they are. They feel themselves as though they are, too.

Q. Why do you say that?

A. Well, because he is the man that gives them cain when anything goes wrong.

Q. You have observed him bawling out the men?

A. Yes, I have.

Q. Did you personally observe I. C. Bennett engaging in any unusual conduct prior to this?

A. I certainly did.

Q. Will you state what?

A. Well, I. C. Bennett at times, oh, on or about maybe May the 11th, I guess right around then——

Trial Examiner Walsh: Excuse me a minute. May I interrupt the testimony for a moment to get this I. C. Bennett straightened out? There is a C. I. Bennett who signed the service warrant that was sent to the Employees Association. Is this the same Bennett you are talking about? He signed his name "C. I. Bennett," and the Bennett that has been talked of in this testimony has been I. C. Bennett.

Mr. Kleeb: Well, if the Trial Examiner please, it is my understanding that this Bennett is the same Bennett all along; I mean, this I. C. Bennett or C. I. Bennett, who is——

Trial Examiner Walsh: I see.

Mr. Kleeb: —who was this man's superior, according to his testimony, and who was president of the association, [fol. 319] so far as I know. I don't know of any other Bennett. I didn't observe that variance.

Trial Examiner Walsh: He signed his own name, I suppose, correctly.

Mr. Kleeb: I assume so.

Trial Examiner Walsh: He signs it "C. I. Bennett".

Mr. Kleeb: If the Trial Examiner please, the complaint and notice of hearing was sent to I. C. Bennett, president of the association, and it is signed "C. I. Bennett", so apparently he is president of the association.

Trial Examiner Walsh: All right. Excuse me.

By Mr. Kleeb:

Q. Go on and tell us what you observed Mr. Bennett doing that was unusual.

A. Well, as I say, on or about, around that time, in the middle of May, right around there, at intervals ranging anywhere, I guess, from two to three times a week, Mr. Bennett would leave the job for long periods ranging from, oh, anywhere from one to three hours, and during the periods he was gone, and it seemed no one knew where he had gone to. And if we would have a breakdown in the

meantime, if one of the other foremen up there couldn't fix it, we just had to sit there and wait 'til Bennett got back. In the meantime we were paid for no lost time.

Q. Well, was it customary, prior to this occurrence, for Bennett to leave the plant?

A. Never.

Q. Is it not a fact that for the shear men to make their piecework money it is necessary for Bennett to be around to correct machines when they go wrong?

A. It certainly is.

Q. Is he allowed to touch them, and no one else?

A. He forbids us to touch them.

Q. Was it customary for Bennett to be in the department for the entire shift?

A. It certainly was. It always had been.

Q. You say he was away periodically from one to three hours?

A. Yes; sometimes maybe three hours in the morning, and then he would go back away again in the afternoon.

Q. How many days a week around this time was this occurring?

[fol. 320] A. I would say it occurred two, maybe two and three days, sometimes even four days.

Q. And how many hours are there in your shift?

A. Eight hours.

Q. How long did this action of Bennett continue?

A. It continued up to just prior to the strike. The last day, I remember, was the very day, the day of the strike, that Monday, we had worked.

Q. Did you personally know—Did you or did you not personally know what Bennet was doing when he was away? I mean, did you personally know?

A. Yes, I did, because I made a remark to the other assistant foreman, Walter Wise, up there, I said, "Gee, if this inside union—the inside union is starting to cost us guys a lot of money, with this guy going around away from here all the time."

Q. How did you know that Bennett was away on association business?

A. Because I had that from some of the people—I had a rough idea of where he had been going.

Q. How did you have that idea?

A. From rumors of some of the people from our union that had seen Bennett going into this—into this glass-

testing room that is on the fourth floor, and I imagine it is the bottling building. And he had been seen going into there, and that is where I had asked some of them, and they said, "Yes, we always see him going in there."

Q. You stated that Gerhard does not wear the typical boss or supervisor's uniform?

A. No, he doesn't.

Q. However, in your opinion, is Gerhard to the machine shop what Bennett is to the what you call the shearing department or division?

A. In a smaller—on our type of work someone has more of a responsibility. You know, the responsibility is of greater capacity than it is in the machine shop.

Q. That is, Bennett's responsibility is greater?

A. Yes, is to a greater capacity than Gerhard's.

Q. Did you before the strike ever attend any of the association meetings?

A. I did.

Q. Did you, after signing this petition for Mr. Gerhard as evidenced by Board's Exhibit No. 7 ever sign a membership card?

A. I did.

[fol. 321] Q. Did you sign a card before you attended the meeting or afterward?

A. I signed the card before I attended the meeting. You could not attend the meeting if you did not have this card.

Q. Where did you sign the card?

A. I was called into the machine shop by a fellow by the name of Jimmy—oh, I can't recall his last name. I think it is Mitchell, if I am not mistaken, but I couldn't swear to that. I was called into the machine shop the day of this meeting, the day of the meeting that I attended. And he said, "Here, Joe, you will need this to go into the meeting tonight." This was during working hours. And he handed it to me right on the bench where he was working, right by the lathe where he was working. He handed me this card such as the card you have sitting right there beside you there (indicating).

Q. Just a minute.

(Thereupon the document above referred to was marked as Board's Exhibit No. 8 for identification.)

By Mr. Kleeb:

Q. I show you Board's Exhibit A, marked for identification, and ask you if that is a card like the membership card that you signed?

A. That is the identical one.

Q. Of course, that card has the name of another person on it?

A. Yes, this is the card. There is where we had to sign the name also (indicating).

Q. Did your card have the name of Mohl, M-o-h-l, secretary-treasurer, signed on it?

A. Yes, it did.

Q. And did you sign the line above with your name on the card you had?

A. No, I signed—signed my name right here (indicating).

Q. Wait a minute.

Mr. Kleeb: The witness is referring to the right side of the card. There is a line that runs perpendicular.

A. I had signed my name right in there, and I had also filled out this part here (indicating).

Q. Is that the stub you are referring to?

A. The stub, yes; and the representative of the can room, [fol. 322] who was this Michael—I think his name is Michael or Mitchell, he filled out the other part, but William Mohl's name was on the card when it was a blank card yet.

Q. And was any part of the card retained by you, kept by you?

A. Yes, it was. This stub was. This stub was taken off of the card, and I was given this part here (indicating).

Q. A larger part?

A. Yes. I had to have that to get into the meeting.

Q. I see. Who told you you had to have that to get into the meeting?

A. This representative that I signed the card.

Q. He told you that at that time that the card was filled out?

A. Yes.

Q. The same day of this meeting?

A. Yes, the same day. It was on a Monday afternoon.

Mr. Kleeb: I offer that part in evidence as an example of a membership card used by the association and signed by this witness.

Mr. Reed: That is objected to. It is not material in any way as affecting the company.

Trial Examiner Walsh: Overruled.

(The document heretofore marked "Board's Exhibit No. 8" for identification, was received in evidence.)

By Mr. Kleeb:

Q. Where was the meeting of that day held?

A. At the Carnegie Library.

Q. At the Library?

A. Yes.

Q. Or at the Music Hall?

A. At the Music Hall in the Carnegie Library.

Q. In the evening?

A. Yes, it was.

Q. Did you have to present your membership card to get in?

A. I did.

Q. Do you recall when that meeting was held?

A. If I am not mistaken, it was the Friday before the strike, but I couldn't swear to that. It was either that Friday or the previous Friday.

[fol. 323] Q. Were you at the first Carnegie Music Hall meeting of the Association on the 11th of May?

A. No, I wasn't.

Q. —It was the meeting after that?

A. It was the meeting after that, yes, sir.

Q. How did you know that there was a meeting of the Association?

A. Bennett had told me that there was a meeting.

Q. When had he told you?

A. He had told me that Friday morning in work. He asked me if I had got my card and I said, "No," I *I* didn't get no card yet. He said, "You didn't get no card yet?" And I said, "No, I haven't got no card as yet."

And then in the afternoon he come up and he said, "You go back and see Jimmy back in the machine shop. He has your ticket back there." And so I went back, and then I signed the ticket.

Q. Did this occur during your working hours?

A. It did.

Q. Who was this Jimmy in the machine shop; that is, what did he have to do with the Association, if you know?

A. Well, he was a new employee, I don't know where he had come from, or why he was there, but he was just—he was the last man, I think, prior to the strike—I think he was the last man hired in that machine shop. He wasn't there very long before that time.

Q. Who conducted this meeting at the Carnegie Music Hall?

A. Well, Bennett conducted the meeting and McDonald spoke.

Q. Who is McDonald?

A. The attorney here of the Heinz Employees Association.

Q. Was anybody else on the stage besides Bennett and McDonald?

A. No, there wasn't.

Q. Can you relate briefly just what took place at that meeting?

A. Well, the meeting had just looked as though it was one of the fixed meetings, and they would start talking, and Bennett called the meeting to order, and he said, "Well, what have you got to say, and what have you got to say," [fol. 324] pointing out certain ones throughout the room, and it seemed as though they all got up and gave their little speech. And none of it was really facts pointing toward a union or anything, and a fellow from over in the machine shop by the name of Harvey, a young fellow that was an old employee down there, he got up and said to Bennett, "Well, now, just what is this Heinz Employees Association, and what is it going to get us? How much more wages are they going to get us? And what better working conditions are they going to make?" And Bennett said, "We won't go into that right now." And this fellow started sort of a little argument about, "Why won't we go into it? This is what we want to know." And Bennett got all worked up there, and he couldn't answer this man what the purpose of this organization was, and then he said, "The meeting is adjourned."

Q. Do you recall whether Bennett said anything for or against outside labor unions at that meeting?

A. No, I don't recall.

Q. Do you recall whether Mr. Bennett said anything for or against dues you have to pay to outside unions?

A. Yes, he did say about "Why give—why give the Communists—why give those Communists a dollar and a half

a month when they aren't going to give you anything? And we are only going to charge"—I think it was fifty cents—I think it was $2 a year. I can't recall how much it really was, but he said, "Why give those Communists that amount of money, a dollar and a half a month."

Q. Had you paid any initiation fee or dues prior to the time you got this membership card?

A. I had not.

Q. Have you ever paid any membership dues?

A. To the Heinz Employees Associatsion?

Q. To the Association?

A. I have not.

Q. Have you ever attended any other meetings except this one of the Association?

A. I haven't.

Q. Have you observed any change in the company's attitude with reference to giving plays or movies and allowing social activities at the plant since the A. F. of L. Local won the election in June of this year and prior to that time?

[fol. 325] A. Well, we just don't have anything at all any more what we used to have. We had scheduled the men's 57 Club picnic which was supposed—that is the club we all belonged to. We were supposed to have a picnic right before the trouble occurred, the Saturday before the strike, I think the picnic was supposed to be, and we none of us ever heard of it after that, and they never had any more movies or anything after that.

(Thereupon the document above referred to was marked as Board's Exhibit No. 9 for identification.)

By Mr. Kleeb:

Q. I show you Board's Exhibit No. 9 for identification. Will you look at it, read it and state if you have ever seen a paper like that before? "Yes or no" if you have or have not.

A. No, I have not seen that.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. In any department where the men work by the piece, getting paid for whatever they turn out, it is generally

somebody who goes around and repairs machines and remains on duty who is an hourly worker; isn't there?

A. Well, generally, I would say.

Q. It wouldn't be possible for Bennett to be paid on piece work when his job is to go to a machine that is broken down and fix it up; would it?

A. No, it wouldn't.

Q. And he is paid on an hourly basis; isn't he?

A. As far as I know, yes.

Q. But he is a worker with the others and not a foreman; is he?

A. I would class him as a foreman, yes.

Q. He doesn't fix your rate of pay, does he?

A. Well, he is responsible for how much I make, though. He puts me on my job every morning. He puts me on a different job every day.

Q. But he is not the foreman of that department, is he?

A. Well, I don't know why you wouldn't class him. He [fol. 326] assigns me to my work. He tells me when to start and when to go home.

Q. But he doesn't hire you or discharge you or fix your wages, does he?

A. —No, neither—why, how do you mean, fix my wages?

Q. Fix your rate of pay. He has nothing to do with that?

A. Well, when I get a raise, he tells me about it.

Q. When did he tell you of any change in your wage?

A. Well, now, there is a piece work—there was a piece work rate come out in the last raise that we had got, and we all met over in one—over on the side of the building, and Bennett had posted up, written with ink, posted right on the wall, right near where we work, where we meet in the morning the new rates that were in effect for our piece work.

Q. But that came from the office, didn't it?

A. Well, naturally, you have a payroll department. Naturally they take care of the paying, I guess.

Q. He has nothing to do with fixing your rate? He simply posted a notice that came from the office, didn't he?

A. Well, naturally.

Q. Yes. And there has to be somebody in every group of workers who leads off in those matters; doesn't there?

A. Well, yes.

Q. Now, that foreman's uniform you are talking about, that is just a question of whether they wear white or grey, isn't it?

—. Well, now, I imagine the man who would be working around machines, if he didn't have to, he wouldn't want to wear a white uniform working around grease. He is around machinery all the time.

Q. But the uniform isn't furnished by the company, is it?

A. It certainly is laundered by the company free of charge to the foremen, though, isn't it?

Q. It isn't furnished by the company, is it? You can get your own uniform.

A. I don't know whether he buys his own. I know it is laundered free by the company for the foremen.

Q. There are lots of people who wear white clothes who [fol. 327] are not the foremen in that plant; aren't there?

A. Not with a white cap, no.

Q. Not with a white cap?

A. No; the foremen have a special kind of cap.

Q. Well, is the cap the distinction you make? Is that why you say Bennett is a foreman because he has a cap like a foreman?

A. Well, he had the dress of a foreman, the same dress as any other foreman has.

Q. There are lots of foremen who don't wear that white dress; aren't there?

A. Well, in certain parts there are, yes, some that wear grey, but they are all designed by their uniform.

Q. And there are lots of people in the organization who wear the white who are not foremen?

A. Not the same as what Bennett wears, no.

Q. Your only reason for saying that Bennett was a foreman is because he wears a uniform like a foreman?

A. No, that is wrong.

Q. Because he lays out the work and fixes the machines?

A. Because he is my superior, that it why I say it.

Q. Well, Bennett would be eligible to membership in your organization, wouldn't he?

A. Oh, I don't think we would want him.

Q. He was eligible to vote in the election under the Labor Board's rules, wasn't he?

A. I didn't see him voting down there.

Q. You know he was eligible, don't you?

A. I don't know if he was or not. There were votes challenged there. I don't know if his was challenged or not. I was not sitting inside.

Q. You know that men doing the same kind of work that he was doing were permitted to vote; don't you?

A. I don't know of any other men doing the same kind of work.

Q. Now, there are seven men that work under Bennett, as you say, are there?

A. Yes.

Q. Did he talk to you to urge you to join this organization?

A. He did.

Q. And you didn't feel that he was exercising any kind of influence over you or coercion? Did you?

A. Well, that is my personal opinion.

[fol. 328] Q. Now, Gerhard is just a die worker paid the same as the other employees; isn't he?

A. Oh, I have no idea whatsoever as to his pay.

Q. Well, are you claiming that these men were doing something that the company told them to do in talking about membership?

A. I do.

Q. That is, you are charging that Gerhard and Bennett and men of this type were doing something the company had instructed them to do in getting these matters——

A. I imagine so, yes.

Q. Well, you are just imagining that? You don't know of anything of that kind; do you?

A. What further is it than imagination? You are just imagining that they aren't.

Q. It is not to produce such testimony in court, that is why I would like you to say. I want you to understand your imagination is not what you ought to be giving us here. It is whether you know. You are just guessing?

A. Well, I know what I told. My testimony is what I know. I told where he had gone to and how long he had gone.

Q. Now, there was a rather sharp division among the employees over there during the strike, wasn't there?

A. There was not no sharp—there was none whatsoever. They were in mixing with us right at the time the strike was, and there was nothing going on whatsoever as to any kind of roughness or anything else. We talked with them the same as you and I would talk.

Q. Wasn't there a close vote in the elections as to which organization should represent the employees?

A. Well, 276.

Q. Majority?

A. Majority, yes.

Q. Out of how many employees?

A. Out of—we had 1,079 votes, and they had 803.

Q. Well, that is a fairly even division among the employees, isn't it?

A. Well, the majority wins, and we won.

Q. I am not challenging that, but don't you know that that is why the social events over there were given up on account of the bad feeling between the employees engendered by the strike?

A. Would you repeat that, please?

[fol. 329] Q. Don't you know that the discontinuance of social activities over there was due to bad feeling engendered during the strike between the fairly even division of the employees?

A. Well, I don't say that. I wouldn't say that. I would know better than you, because I am in there working with those people.

Q. I am asking you.

A. There is no hard feelings, hard feelings to that point. Naturally, we are bitte against them and they are bitter against us; that is natural.

Q. That is what I wanted to know.

A. Why would that be the reason of not having the social functions and being cut out altogether?

Q. Well, the two bitter factions wouldn't get along very well in the movies and games; would they?

A. There has never been any rows in the company or outside in the street in the picket lines yet, any kind of trouble between the employees, though, has there? There was no disorder.

Q. Were you on the picket line?

A. I certainly was, every day.

Q. Were you one of the ones that refused to allow the office employees to enter the office building during the strike?

A. (No answer.)

Q. You kept the executives from entering their offices during the strike; didn't you?

A. I didn't keep nobody from any place.

Mr. Kleeb: Just a minute. I object to this line of questioning as irrelevant and immaterial and incompetent to the issues involved.

Mr. Reed: I thought it all was in the beginning, but it has been gone into quite extensively by the Government.

Mr. Kleeb: I don't think the Government went into the question of this strike at all with this witness.

Trial Examiner Walsh: Objection overruled.

By Mr. Reed:

Q. You may answer the question.

A. Will you repeat the question, please?

Trial Examiner Walsh: The Court Reporter will please repeat it.

Mr. Reed: I think I can ask it again.

[fol. 330] Trial Examiner Walsh: Do you remember just how it was worded?

By Mr. Reed:

Q. Isn't it true that during the strike the pickets prevented executives and the factory employees from entering the office building—factory executives from entering the office building?

A. Well, we picketed there, but none tried to enter. If they had the man power, they could walk right through this picket line. We wouldn't have stopped them.

Q. You mean if they had the man power?

A. If they had the man power, yes.

Q. It was a question of fighting their way into the office?

A. It was not no fighting at all. There was a picket line. If you walked through it, that was up to you.

Q. How much man power do you think it would have taken for the executives to have gotten through that picket line?

A. Well, they didn't have enough, I guess, to even attempt it because there was nothing to stop them. There was only 10, 15 men, walking around the place, and all of them outside there. We didn't stop nobody or put anybody away. If any body wanted to go into work, why didn't they try to go into work?

Q. Do you know that Anderson, the vice president of the company, was denied admission to the office building?

A. No, I don't.

Q. You didn't hear that?
A. No, I didn't.
Mr. Reed: That is all.
Trial Examiner Walsh: You may be excused.
(Witness excused.)
Mr. Kleeb: John Warnick.

JOHN WARNICK, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. What is your name?
A. John Warnick.
Q. Where do you live?
[fol. 331] A. 1126 Sawmill.
Trial Examiner Walsh: A little more slowly.

By Mr. Kleeb:

Q. Speak slowly and loud enough for everyone to hear.
A. Yes, sir.
Q. Are you now employed at the Pittsburgh Plant of the H. J. Heinz Company?
A. I am.
Q. How long have you been employed there, approximately?
A. Well, since I have been called back to work, it is about 20 months this last time.
Q. What department?
A. Well, I belong up in the canning room, but about nine weeks now, why, they have been pushing me around wherever they needed me.
Q. Did you ever have any conversation about unions with any boss of the Heinz Company?
A. Yes, sir.
Q. Who?
A. With Mr. Oscar Hayes.
Q. And who is Mr. Oscar Hayes?
A. The assistant superintendent of the H. J. Heinz Company.

Q. Approximately when did you have this conversation with Mr. Hayes?

A. I imagine about one week before the strike.

Q. And the strike occurred on May 24th, 1937?

A. Yes, sir.

A. Will you please relate where you had this conversation and what the conversation was?

A. Well, my job, I am a jitney driver up there in the canning room and I started——

Q. Slower.

A. I start at 4 o'clock in the afternoon. So one afternoon about half past 1:00, I took a walk over to the water works, which they have for storage, and have a rubbish platform there, and I went over there for some kindling wood. When I went in there, Mr. Hayes was in the service car talking to Stanley, the watchman there. So I waited until he was through, and pulled around with the service car, and stopped right alongside of me, and he says, "Well, John," he says, "what do you think of your dumb buddy?" I says "What do you mean?" He says, "Why, Frank Jadowick."

[fol. 332] Q. Frank who?

A. Jadowick.

Q. Do you know how to spell that name?

A. I couldn't spell that name.

I says, "What do you mean?" He says, "Well," he says, "after having 13 years of service with the H. J. Heinz Company, he turns around and signs up with an outside union." He says, "And to top that off," he says, "it is led by a foreigner," he says, "that hasn't even got a citizen's paper."

I just looked at him then, didn't say nothing. And at that time I hadn't decided just what way I would go myself. So we got to talking, and he says, "Well," he says, "we have 1300 signatures on the H. J. Heinz Company Association list." And I says, "Well," I says, "if you have that many," I says, "why don't you get a charter and force the A. F. of L. out?" He didn't say nothing. We just chatted a while, and then I asked him about a load of wood which I had delivered Saturday morning.

Q. What does this buddy of yours do?

A. He runs a jitney there. We have two jitnies up in the canning room, and I operate one and he operates the other.

Q. Do you say he said that, "We now have 1300 members"?

A. Yes, sir.

Q. And he referred to the members in the H. J. Heinz Company?

A. Yes, sir. He also stated that Mr. Hargraves presided at the first meeting of the Heinz Employees Association.

Q. He told you that?

A. Yes, sir.

Q. Were you ever asked to join the association?

A. No, sir. Oh, I beg your pardon. I have, by Mr. I. C. Bennett.

Q. Is that the Bennett who is in the canning room?

A. Yes, sir.

Q. Do you recall approximately when you were asked?

A. I believe it was around two weeks before the strike.

Q. During your working hours?

A. Yes, sir.

[fol. 333] Q. Will you relate briefly what occurred at that time?

A. Well, my jitney was down on the fifth floor, and I went down, had to get some tin ready to take up as soon as the whistle blowed, because we can't get the elevator to make our deliveries from one floor to the other while the shippers are working. So when I went downstairs to get the tin ready, why Bennett come down. He had me in one of the ketchup bins, and he was telling me about the association, whether I had my mind made up as to whether I wanted A. F. of L. or the Association. He stood there and he talked to me, I would say, about three-quarters of an hour.

Q. Where did this occur?

A. On the fifth floor of the ketchup labelling department.

Q. Where is the canning room?

A. On the sixth floor, right upstairs.

Q. To your knowledge, would Bennett have any business being where he was at that time?

A. No, sir, not unless he was going to the rest room.

Q. And he talked with you about how long?

A. About three-quarters of an hour.

Q. Did he have any papers with him?

A. He had the large sheet.

Q. I show you Board's Exhibit No. 7. Will you look at it and state whether or not the paper that Bennett had was like or similar to that sheet of paper which you now hold?

A. Yes, sir.

Q. Was the wording on the paper the same as that?

A. Yes, sir.

Q. Did you sign the paper?

A. No, sir.

Q. Did you observe other signatures on the paper when you looked at it?

A. There was just one signature on the sheet.

Q. Do you recall whose signature it was?

A. Yes, sir.

Q. Whose?

A. It was Edward Melbourne.

Q. Were you ever asked again to sign a paper?

A. Well, several days after that, why, he had a small one that he handed to me, and on his way home, and he says, whenever I made up my mind to sign, why, he had the sheet there for me.

[fol. 334] Q. I hand you Board's Exhibit 9 for identification. Will you look at it, please, and state if that is the small sheet or small paper to which you just referred?

A. That is.

Mr. Kleeb: I offer it in evidence.

Mr. Reed: I make the same objection that I made before, that it doesn't affect the company, but otherwise it is covered by your previous ruling, I suppose.

Trial Examiner Walsh: Overruled.

(The document heretofore marked "Board's Exhibit No. 9" for identification, was received in evidence.)

By Mr. Kleeb:

Q. Did you take that small paper with you?

A. Yes, sir.

Q. Did you ever sign it?

A. No, sir.

Q. Did you ever sign one with the Association?

A. No, sir.

Mr. Kleeb: Cross-examine.

Cross-examination.

By Mr. Reed:

Q. Oscar Hayes isn't assistant superintendent, is he?

A. Why, he acts as one.

Q. Why, you know the assistant superintendent is Charles Heinz, don't you?

A. I never knew that.

Q. And Oscar Hayes simply works as a handyman around there; doesn't he?

A. (No answer.)

Q. Why do you call him assistant superintendent?

A. Why, he acts as one. He goes around and supervises and stuff of that sort.

Q. A lot of people go around seeing conditions on the premises, don't they?

A. I don't know. It doesn't seem as much as he does, though.

Q. He does it more than the others?

A. Exactly.

Q. You didn't work for him, or he had no right to discharge you?

A. I had a run-in with him one time.

[fol. 335] Q. He had no right to hire or fire or have any supervision over you at all?

A. As far as the hiring is concerned, the hiring is done by the employment department; as far as the firing is concerned, each foreman is entitled to fire, if they see fit.

Q. He had no supervision over your work, had he, Oscar Hayes?

A. Well, according to the rules of Heinz, he is. If anybody disregards his words, why, you can just pack up and leave.

Q. Did you work under the supervision of Oscar Hayes?

A. No, I haven't, not directly.

Q. Now, what he said was a remark about somebody else being dumb for joining the outside union?

A. Exactly.

Q. He didn't tell you what you should do?

A. No, because at that time he knew that I didn't sign anything as yet.

Q. Well, he didn't ask you to sign any application for the association; did he?

A. No.

Q. He didn't try to exercise any influence over you at all, did he?

A. No.

Mr. Reed: That is all.

Redirect examination.

By Mr. Kleeb:

Q. Just a minute. Will you just state briefly how, as far as you know, the employment of employees is handled at the Heinz Factory? How do you get a job there?

A. Well, they have an employment office. That is right there on Prospect Way. There is a fellow named Regis in there. I just don't know his last name. There is Miss Weisman, Catherine Ferry. They are in charge of the employment.

Q. Do you file the application there?

A. Yes, you file an application there, but it is best not to.

Q. Well, how would you get a job if you didn't do that?

A. Well, your chances of getting a job in the H. J. Heinz Company is going in there, and if they need anybody, why, then you are hired, or if you have had service there before, [fol. 336] why, that way they might call you back if they see fit.

Q. But you do apply, or go to the employment office for a job?

A. Yes, sir.

Q. Now, as a worker there, what is your understanding as to how people are fired? I mean, what is the procedure for firing a man, as you know it?

A. Well, I am sorry, I can't state that right at the present time.

Q. Then you personally don't know which official of the company can hire or which official of the company can fire? And say, "You are fired" and "You are fired", do you?

A. No, sir.

Mr. Kleeb: That is all.

(Witness excused.)

Mr. Kleeb: Clifford Armstrong.

CLIFFORD ARMSTRONG, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. What is your name?

A. Clifford Armstrong.

Q. Where do you live?

A. 1307 East Street, north side, Pittsburgh.

Q. Are you now employed at the Pittsburgh Plant of the H. J. Heinz Company?

A. Yes, sir.

Q. Speak out, Mr. Armstrong, in answering these questions.

How long have you been employed there?

A. Oh, about—I was there seven years in April.

Q. What work do you do?

A. Well, right now, I am working up in the spaghetti kitchen doing all kinds of jobs, cooking and weighing up vegetables and different jobs like that.

Q. At the time of the strike at the plant, May 24, 1937, what were you doing?

A. I was sealing cases on the fourth floor, spaghetti building.

Q. Is there a name to that department?

[fol. 337] A. Spaghetti packing department.

Q. What building is this department in?

A. In the spaghetti building.

Q. Who is in charge of the spaghetti building?

A. Mr. Brooks.

Q. Do you recall having any conversation on or about April 27th of this year with Mr. Brooks regarding labor unions?

A. Well, Mr. Brooks called all the people in my department back in the corner there. There must have been about, oh, I judge about 40, 50 people. And he called us on the side, and he told us that he wasn't sent by the company, or the company sent him in no way, that he was taking this on his own shoulders to call us on the side and tell us about unions. He told us about the money that Green takes in and how much he is getting a year, that we shouldn't join that

kind of a union. And he said, "Now, I am not trying to influence you in any way, but, he said, "Why not have a union of our own here?" Well, that was the first I heard about unions.

Q. Well, tell me, did you personally ever talk with Mr. Brooks alone?

A. Yes, sir.

Q. About unions?

A. Yes, I did.

Q. Did that occur before this general meeting or after?

A. After this general meeting.

Q. About when did it occur, and how did it occur?

A. I believe it was the following morning my foreman come up here to me. That was Mr. Fred Mozeyka. He said, "Mr. Brooks wants to see you in his office."

Q. That is the following morning after this general meeting?

A. That is right.

Q. Now, before we go into that, have you told everything that happened at this general group meeting the day before when Mr. Brooks talked. Have you told everything you can remember?

A. I think I have.

Q. And how many do you say were there? How many employees about?

A. Oh, I just judge, just a rough guess, I would say there were 40 or 50.

[fol. 338] Q. Were you all taken from your work to hear Mr. Brooks' remarks?

A. Yes, we were, oh, about 20 minutes to half on hour.

Q. And did you report the next morning at your foreman's request to Mr. Brooks' office?

A. Yes, I did.

Q. And who was present?

A. Mr. Brooks and I.

Q. Just the two of you?

A. Yes, sir.

Q. Were you taken from your work to have this conversation?

A. Yes, sir, I was.

Q. Will you please relate what the conversation was about between the two of you?

A. Mr. Brooks says to me, "Armstrong, what do you think about these unions, these outside unions; that is, A. F. of L.

and C. I. O.?" I says, "Well, Mr. Brooks, I am married, and with all these strikes going on, why, I don't like them, because I can't bring no money in the house if I don't work." And he said, "Well, I am glad to see your attitude, Armstrong." He said, "That is fine." And that was all—that was all we had over there.

Q. Was there any conversation that time about what would happen if there was a strike?

A. Well, yes, I believe there was. Mr. Brooks told me that if there was a strike—no. He asked me what I would do if there was a strike in the plant, and I told him that if there was a strike, why, and I was stopped by anybody on the street, that I wouldn't pay no attention, I would come right into work, and that was all that was said about strikes.

Q. Are you well acquainted with the employees in the spaghetti building in general?

A. Well, I know practically all the employees in the spaghetti building, that is, the fellows.

Q. The men?

A. The men, yes, sir.

Q. Did that conversation with Mr. Brooks occur in the morning or in the afternoon?

A. That conversation was in the morning.

Q. Do you recall anything unusual happening at work that afternoon?

A. Well, that afternoon a fellow came to me and introduced himself as Eddie Kranz.

[fol. 339] Q. Eddie what?

A. Kranz.

Q. Did you know this man before?

A. Well, I seen him around the factory but I didn't know him to talk to.

Q. And where were you when he came to you?

A. I was working.

Q. Go on.

A. Well, see, it was just before the flood, and we were doing different jobs around getting ready for the flood, picking up stock and moving cases around. It was just before the flood. Mr. Kranz called me over to the side—no, I beg your pardon. A fellow came over to me and said, "Mr. Kranz wants to see you over there." It was Joe Mageria. Well, I went over and I asked him what he wanted, and he asked me what I thought about the union.

I said, "Well, I don't like them." And he says, "Well, I am glad to hear that. Here is—" He said, "We are starting up an organization that is called the Heinz Employees Association." He said, "We are putting out petitions, and here is a slip here." And he says, "See how many fellows are of the same opinion as you are, and get them to sign this slip."

Q. I show you Board's Exhibit 7. Will you look at that, please, and state is that the kind of a slip which Mr. Kranz gave you?

A. Yes; he gave me about three or four of these slips.

Q. It had that wording on it?

A. The same exact wording?

Q. But no names on it?

A. No names on it.

Q. And what were you to do with these papers?

A. Well, he told me to take this slip around and get the fellows to sign their names on it. Well, at the time, I didn't go into detail with him. I didn't question him. I just took his word for it that this was to be headed by some union person, and I went around, and I asked the fellows if they want to sign.

Q. Now, pardon me a minute. About what time was it when Kranz came to you?

A. Oh, this was about, I would say half past 1:00 or 2 o'clock.

[fol. 340] Q. During your working hours?

A. Yes, sir.

Q. And did you solicit signatures that afternoon?

A. Yes, sir.

Q. So far as you know, should Mr. Kranz have been at his work at that time?

A. Well, I believe he should have.

Q. Did you raise the question of going around during working hours and getting signatures with Mr. Kranz?

A. I asked him. I says, "Well, when do you want me to get these signatures?" He says, "Start getting them right away." I says, "I am supposed to be working." He says, "That is all right; your foreman will let you go." I says, "But what will Mr. Brooks say?" He says, "That is all right with him, too."

So I didn't want to take his word for it; so I hunted up Mr. Brooks, and I showed it to him, and Mr. Brooks—

Q. Let me interrupt there just a minute.

Mr. Reed: Let him finish. What did Mr. Brooks say?
Mr. Kleeb: I will develop that.

By Mr. Kleeb:

Q. Did you contact Mr. Brooks that same day?
A. Well, not that same day.
Q. What——
A. Not that same afternoon.
Q. Did you spend the afternoon soliciting signatures?
A. That is right.
Q. Did any boss or any foreman or boss in any part of the spaghetti building stop you that day?
A. Mr. Kearns stopped me on the first floor. I was working on the fourth floor, but I was all over the building that same day, and I was down on the first floor, and I saw Mr. Kearns down there. And I called some fellow from his work, and I asked him to sign this, and he asked me what it is. I says, "Oh, it is a company union." and he—just then, when I called this fellow from his work, Mr. Kearns called me aside, and he said, "Let me see that, Armstrong." And I showed it to him. And he says, "What are you doing with that thing?" I said, "Well, this is a slip." He says, "Well, does Mr. Brooks know about this slip?" I [fol. 341] says, "Well, I will go and see him."

Well, I went and I hunted him up—well, it was—I was quitting then. Well, that next morning, the first thing I did was to hunt up Mr. Brooks, and I asked him if the slip was o. k. And he looked at it, and he says, "Yes, I have seen them. All right." They were o. k. Well, then, I saw Mr. Kearns the next day and I showed it to him, and I told him that Mr. Brooks said it was all right. And he told me if it was all right with Mr. Brooks it was o. k. with him.

Q. Who was your foreman?
A. Mr. Mozeyka.
Q. Mozeyka?
A. Mozeka, M-o-z-e-y-k-a.
Q. What is his first name?
A. Freddy.
Q. He is your foreman?
A. Yes, sir.
Q. Did he ever call you for leaving your work and getting signatures?
A. Well, he used to send a fellow on to take my job while I went to get signatures.

Q. Did he ever bawl you out for leaving your work and getting signatures?

A. No, sir, never said a word.

Q. Did you tell your foreman what you were doing?

A. Well, I showed him the slip what I was doing.

Q. And what did he say to that?

A. He told me, he said, "Well," he says, "you know what you are doing." So I imagined it was all right with him. He never bawled me out.

Q. About how much time did you spend after this incident with Kranz soliciting signatures on company time?

A. Oh, maybe two hours a day, three hours a day. In that entire week I guess I lost about six, seven hours. I was——

Q. Were you docked in pay for that?

A. No, sir.

Q. State whether or not you had occasion later on to discuss this same thing with Mr. Brooks?

A. Well, yes, I did.

Q. When?

A. One morning Joe Mageria came and told me that Mr. Brooks wanted to see me.

[fol. 342] Q. Do you recall how much time elapsed between your prior conversation with Mr. Brooks and this incident?

A. Well, I don't know exactly. It must have been about three or four days.

Q. And who is Joe Mageria?

A. Joe Mageria is a—he fixes machines on the fourth floor.

Q. And did you then go to Mr. Brooks' office?

A. That is right.

Q. What time of the day was it?

A. That was in the afternoon I went to Mr. Brooks' office.

Q. During working hours?

A. Yes, sir.

Q. Was anyone in the office besides Mr. Brooks?

A. Well, there is two offices. He come out of his one office, and we went into a private office on the side, and he started talking to me about this union.

Q. Tell us now, as carefully as you can, just what the conversation was between you and Mr. Brooks on that occasion.

A. Well, Mr. Brooks says, "Armstrong," he says, "this thing isn't moving fast enough." He said, "The names

aren't coming in fast enough." He says, "Why don't you get some help?" He said, "For instance, get Andy Hubstenberger from the first floor and Louis Beniquista, and Andy Porack from the seventh floor."

He said, "That will help you get the names faster."

And I says, "Well, all right," I would see them.

So I left the office.

Q. Did he say anything about the inside or outside unions at that time? ?

A. Not that I recall.

Q. Did you at the time know Andy Porack?

A. Yes, I did.

Q. Did you know—who is the other one, Louis Beniquista?

A. Yes, I knew him.

Q. And the other one was?

A. Hubstenberger.

Q. Did you know at the time why Mr. Brooks should choose those three men?

A. No, I didn't know at the time, no.

Q. Did you make any reports to anyone as to the progress [fol. 343] you were making in getting signatures.

A. I made reports to Eddie Kranz over in the glass-testing department. I would get names one day and I would take a slip over and give it to him, and he would give me another one or two slips to fill up for the next day.

Q. Well, does Eddie Kranz work in the glass-testing department?

A. Yes, he does.

Q. How did you know to go over there and give it to him?

A. That is where he told me to come.

Q. You would get some signatures to some petitions and turn them in to him?

A. That is right.

Q. And he would give you some more blanks?

A. That is right.

Q. Did you follow Mr. Brooks' suggestion and contact these three employees in the spaghetti building?

A. Well, I contacted two of them, Louis Beniquista and Andy Hubstenberger.

Q. Why didn't you cantact Andy Porack?

A. Well, he happened to be an officer in the outside union.

Q. Is that the reason you didn't contact him?

A. That was the reason.

Q. What happened when you contacted Andy Hubstenberger and Louis Beniquista?

A. I gave Andy Hubstenberger a slip one afternoon and he—I came back for it the following morning and he said they had torn it up and thrown it away, and Louis Beniquista, the strike started before I got a chance to talk to him.

Q. Mr. Armstrong, do you personally know who started the Heinz Employees Association?

A. No, I do not.

Q. Do you know who printed the petitions given you by Eddie Kranz for you to get signatures?

A. I don't know that, either.

Q. Did you attend any meetings of the association?

A. No, I did not.

Q. Do you know anything about the association?

A. No, sir.

Q. At the time you talked with Mr. Brooks did you or did you not think it unusual that Brooks and your foreman [fol. 344] permitted you to walk around the building as you saw fit?

A. It did seem kind of strange.

Q. Did you think much of that fact at the time?

A. No, I didn't.

Q. Why didn't you?

A. Well, I had been in spaghetti so long, and I figured it as sort of a promotion for me.

Q. How do you mean, you thought it was sort of a promotion that you should do this?

A. Mr. Brooks was promising me, he promised me two or three jobs that were better than I had before that. Once he promised me a job on a double seamer, and I didn't get that job, and he promised me one as assistant foreman on the fourth floor, but both of the jobs fell through, and I figured maybe he was giving me a chance again.

Q. Is it customary for employees to go around the building in all departments and leave their work and get signatures to petitions?

A. No, I don't think it was.

Q. Did you ever lose a penny of your pay for not doing your work?

A. No, sir.

Q. Who took your place at work when you were absent getting these signatures to these petitions?

A. Well, when I was sealing, Joe Mageria would take my place, but on this afternoon nobody took my place, when I was working on this flood stock, getting all the stock from the first floor.

Q. Were you ever requested by anyone to attend an association meeting?

A. Kranz requested me to attend a meeting.

Q. What meetings was this, if you remember?

A. I believe it was the first meeting they held.

Q. Did you attend?

A. No, I didn't.

Q. What did you tell Kranz, if anything?

A. Well, I don't recall. I don't remember if I told him anything or not.

Q. Was the meeting to be held during working hours?

A. No, the meeting was not to be held during working hours, at 5:30.

[fol. 345] Q. Did you—Would you not have been working at 5:30?

A. I would have; yes.

Q. Did you attend the meeting?

A. No, I didn't attend the meeting.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. This promise of Brooks for another job, that was long before this happened, wasn't it?

A. Yes, it was.

Q. It had nothing to do with this soliciting you were doing?

A. No.

Q. And Kranz is just a fellow employee, he is no superintendent or foreman?

A. That's right.

Q. Neither were these other men that he mentioned to you, were they?

A. No, they weren't.

Q. It wasn't unusual for Mr. Brooks to gather the people of your department together for a meeting, was it?

A. No, it wasn't.

Q. You had safety meetings, and meetings at which you discussed cleanliness and a lot of other things, didn't you?

A. That's right.

Q. And at this one meeting he discussed whether a union was a good thing or not?

A. That's right.

Q. And his whole theme was, "We mustn't have a strike or shutdown"?

A. That's right.

Q. He said strikes didn't do anybody any good?

A. Yes.

Q. And the whole talk was to try to prevent strikes?

A. Yes.

Q. He didn't try to get you to join a union, or not, did he?

A. In a way, yes.

Q. You knew how he felt about it, but he didn't try to influence you, did he?

A. I figured he did, when he said it was all right to join these names. I figure it was——

[fol. 346] Q. He didn't say it was all right for you to go around during working hours, did he? He told you it wasn't?

A. No, he didn't.

Q. Didn't Mr. Brooks tell you you should not solicit memberships during working hours?

A. No, sir.

Q. You showed him the slip and he said the slip was O. K.?

A. Yes, he said, "I have seen others like it."

Q. But he didn't tell you to go around and get signatures during working hours?

A. He didn't tell me not to, either. It was during working hours when I spoke to him.

Q. You didn't ask him if you had a right to do that during working hours?

A. I don't know. He saw me signing up during working hours.

Q. When Kranz stopped you he said you shouldn't do it during working hours?

A. He said, "Well, does Brooks know about this?" when he saw me doing it.

I said, "Yes."

He says, "Well, if it's all right with Brooks it's all right with me.

Q. You did, later, join the other union?

A. Yes, sir.

Q. And Brooks never said anything to you about that, did he?

A. Right after the strike I was—I don't know the exact time, but I was in the washroom, and Mr. Brooks was in there, and he says, "What kind"—He said, "You are a hell of a guy, aren't you?"

And I said, "Why, what do you mean?

He said, "What side are you on?"

I said, "I am on the side I think is the best."

He said, "That's your opinion", and he walked out of the washroom, and that's all that was said.

Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. It wasn't customary for Mr. Brooks to have assembled meetings of your department to talk about unions, was it?

A. No, it wasn't.

[fol. 347] Q. That was the only time he ever did that?

A. Yes.

Q. That time you went to Mr. Brooks about getting signatures to these petitions during working hours you asked him if it was all right, didn't you?

A. Yes.

Q. And he said it was?

A. Yes.

Mr. Kleeb: That's all.

Mr. Reed: That's all.

(Witness excused.)

Bennie Zecca, called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. What is your name?

A. Bennie Zecca.

Q. Where do you live?

A. No. 2 Diana Street, Spring Hill.

Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?

A. Yes, sir, I am.

Q. How long have you been employed there?

A. Eight years and five months.

Q. What department?

A. Spaghetti department.

Q. That's in the spaghetti building?

A. Yes, sir.

Q. Were you ever approached during working hours to join the Heinz Employees Association?

A. Well, I wasn't exactly approached but I was sent down to the office once, Mr. Brooks' office, and he just asked me a few things about——

Q. What did he ask you?

A. He asked me if I knew about these unions going on, and I says, "Yes, I do, but I don't know so much about them," because I had been sick the week before, when all this union business was going on, and I didn't know a whole lot about it; so he says, "Well, you know you have been making your work here for over eight years," and he says, "it hardly seems right for you"—To "treat us right"; and [fol. 348] I said, "Yes, I agree with you there but I haven't made up my mind what union I want to belong to, because I don't know what each of them is doing; what good I am going to get out of each one.'

So he says, "Well," he says, "Louis Beniquista is a man can tell you something about it." So he says, "Why not go up and see him?"

Well, I was supposed to get done at 12 o'clock that afternoon, and I had made an appointment to be some place later on, and there was a man away from my job, so I had to work that afternoon, and my appointment was broken for that time, and I figured if I get there three or four o'clock, maybe I can still fill it, and he says, "Why not go up to see him now?" And I says, "Well, I don't have any time." I says, "I will be glad to go up to see him some time again."

He says to me, "Oh, so you don't want to go up to see him?"

I said, "Not exactly." I said, "I don't just have the time right now." I says, "I will go up and see him later," and that was all——

Q. Were you ever asked to join the association by any fellow-employee?

A. No, I was never asked by anybody, by any fellow-employee.

Q. Did Mr. Heinrich, the superintendent, ever discuss unions with you?

A. Well, there was one time I was working at a gate, watchman there, a man that was sick there, and I took his place, and he was trying to approach me, and he said, "Bennie."

I said, "Yes?"

He says, "How come you are doing this work here?"

I says, "Well, Mr. Russell, the man that takes charge of the watchmen, he asked me to come down here, and I came down here."

He said, "Do you know that if it was union here, do you know what pay you would be getting?"

I said, "No." I said, "I imagine I would be getting the same as I am now."

He says, "Well, the watchman's job is not a hard job." He says, "It doesn't require much." He says, "You wouldn't get the same amount of money on that job as you would for the regular job you do."

And I said, "I really didn't stop to think that far, because it's customary for the company, at any time there isn't any [fol. 349] work in your own department, to go to work in another department, and they still pay you the same wages, whether you sweep or stack or regardless what it is," and that's why I didn't think that far. And that's all he said about that; then he went away.

And there was another time I was approached by Mr. Heinrich and Mr. Ruddick.

Q. Who is Mr. Ruddick?

A. That's the safety man we have there; and this time I happened to be unloading five-gallon pulp.

Q. About when was this?

A. Oh, this was, I judge, about two weeks before the strike.

Q. What was said to you?

A. And he seen me there and he called me over and said, "Bennie, who are you working for?"

I says, "For Mr. Young." That's the man that takes care of the unloading, any kind of unloading. And Mr. Ruddick was there with him, and they had a little discussion

about, oh, about the flood, anyhow, and about different things, about him meeting my wife, and things like that, that I should ask her what I should do, you know, and I said, "Well, my wife doesn't say much about it. She figures whatever I say goes, because"——

Q. What you should do about what?

A. About this union business, whether I should go for the inside union or outside, and I says, "Well,"——

Q. Did Mr. Heinrich state which one he preferred?

A. No, he says he didn't care what union was there. He made one point plain to me. He said, "Your job is running a crane," he said, "if there is an outside union in here your job is a crane-operating job, and we have no other job for you, you go home, you don't get no other work unless we have that particular type of job."

And I says, "Well," and he says, "This way you could do any of them."

Q. Did he say that would not happen if there was an inside organization in? That you would get other work if you had an inside organization.

A. He says, "The way things are now," he says, "If there is no work in your department, if we have work for your any other place you would get it.

Q. But that would not happen if the outside organization had been in?

[fol. 350] A. No. If I would sign up for a craneman's job and there was no craneman's job to do, I would go home until they would have that work.

Mr. Kleeb: Cross-examine.

Cross-examination.

By Mr. Reed:

Q. In other words, if you belonged to the cranemen's union you couldn't work as a watchman is that it?

A. Perfectly right. No other work but that job, if I signed for that job.

Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. With the cranemen's union or the outside union?

A. Well, the outside union, but if you would sign for the cranemen's, that would pay more than labor or for

watchman, because that's more of a—It is not like any other job. It requires a little skill.

Mr. Kleeb: That's all.

(Witness excused.)

ALBERT DALLY, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Albert Dally?
A. Yes, sir.
Q. You live at 816 Blossom Way, North Side, Pittsburgh, Pennsylvania?
A. I do.
Q. And you are now employed at the H. J. Heinz Company?
A. I am.
Q. About how long have you been employed?
A. About four and a half to five years.
Q. Are you in the spaghetti building?
A. I am.
Q. Do you know Clifford Armstrong?
A. I do.
Q. Were you, during working hours, approached by him [fol. 351] to sign a petition for the association?
A. Yes.
Q. Do you recall about when that occurred?
A. That was some time in April; about 2:30 in the afternoon, I don't remember the exact date.
Q. Latter part of April?
A. Well, around that, yes.
Q. Did you sign?
A. No.
Q. Have you ever signed with the association?
A. No.

Q. Did anyone else ever approach you about the association?

A. No—Wait a minute; what do you mean by that?

Q. About joining it, or attending meetings, during working hours; did any boss or official approach you with reference to the association?

A. I was talked to about the union, but not the association.

Q. Who talked to you about the union?

A. Mr. Brooks called us into the office and we was in there about three quarters of an hour.

Q. Who do you mean by "we"?

A. A craneman and I, fellow-worker; Sam Beniquista. He was talking about the union and the way things were running.

Q. When did this occur?

A. About a week before Clifford approached me.

Q. Clifford Armstrong?

A. Yes.

Q. How did you know to go to Mr. Brooks' office?

A. He called us down.

Q. You and Mr. Beniquista?

A. Yes.

Q. Take you from your work?

A. Took us from our work.

Q. What did he talk to you about it; the best you can recollect?

A. I can't say I remember that very much; mostly all about the price of the products going up, and different things in that order.

Q. What did he say about unions?

A. He didn't say nothing, but towards the end he just asked Sam what way he was leaning; in other words, in that respect. I don't know the exact words. And he said he was neutral, he was for neither side, and he reprimanded [fol. 352] Sam for not being one way or the other. He worked there for 14 years, and he ought to know what side he belonged to, and he asked me, and I said, "The outside." That ended the discussion at that time.

Q. Is that the best you can recollect?

A. Yes.

Mr. Kleeb: Cross-examine.

Cross-examination.

By Mr. Reed:

Q. You belong to the union, do you?
A. I do.
Q. What is the nature of the work you do?
A. Sterilizing.
Q. Do you have charge of that?
A. Not charge; I do sterilizing work.
Q. But there are a number of people work under you, for you, are there?
A. I would not say they work under or for me, no.
Q. Are you paid by the hour?
A. Yes.
Q. Are they paid piecework?
A. No; straight.
Q. Or paid by the hour?
A. Paid by the hour.
Q. Do you lay out the work for them?
A. No, the work is assigned by the foreman.
Q. What do you do?
A. Sterilize. I send the fellows their lunch. That's about all I have to do. I have nothing to do with bringing them in or sending them home.
Q. Is your work the same as Gerhard's work?
A. He has charge of the machines.
Q. Same kind as yourself?
A. No.
Q. Is yours the same as Bennett's?
A. No.
Q. Do you give the men instructions?
A. No, we have just retorts, sterilize retorts. Our foreman puts a man on this project and another on this part. I have nothing to do with that at all.
Q. How many men work in your department?
A. I imagine about eight or nine of them, all told. They don't come in all together.
Q. It was quite a usual thing for Mr. Brooks to have conversations with the people either singly or in groups in [fol. 353] the department, wasn't it? There was nothing

unusual about your conversation with Brooks that day, was there?

A. This day it was, to me.

Q. Why?

A. Well, it just seemed that they were all talking about union at that time, and it just seemed unusual he should pick me out.

Q. Everybody in the plant was talking about unions at the time?

A. Yes, but I was never approached about that before, until he did.

Q. But the whole plant was talking union all the time during those days?

A. Yes, I just got it from one workman and the other, but this was the first time.

Q. And didn't Mr. Brooks tell you that day it was your own busines, you could belong to any union you wanted to?

A. Yes.

Mr. Reed: That's all.

Mr. Kleeb: That's all.

(Witness excused.)

Mr. Kleeb: May I make a remark off the record?

Trial Examiner Walsh: Yes.

(Remark off record.)

Trial Examiner Walsh: We will have a 10-minnte recess at this time.

(Thereupon a short recess was had.)

Trial Examiner Walsh: The hearing will come to order.

JOSEPH MARAK, a witness previously called, was recalled for further redirect examination as follows:

Redirect examination.

By Mr. Kleeb:

Q. You testified previously?

A. Yes, I have.

Q. Are you familiar with the procedure followed by the Heinz Company with reference to discharging its employees?

A. Yes, I am.

Q. Would you relate, as far as you know, what that practice is at the plant?

[fol. 354] A. Well, in the hiring end of the plant, you are hired through the employment office. That's the only way you are hired. You are not taken directly in, you are taken through the employment office, and give them your history, and then you are hired as an employee and taken out to the department you are assigned to.

Q. And how about firing?

A. There is no foreman in the plant that fires directly. Practically everyone that is fired from the H. J. Heinz Company in the Pittsburgh plant is discharged through the superintendent's office.

Now, for example, if I am caught doing anything by anyone that is superior to me, even say so much as Bennett, if Bennett would catch me doing something wrong, he could turn me in to Mr. Heinrich, and, if Mr. Heinrich approves you should be fired, he is the man fires you, and he fires through the bosses' recommendation.

Q. And Heinrich is general superintendent of the plant? Do you know Mr. Oscar Hayes?

A. Yes, I do.

Q. What do you know about his job in the factory? Is he a superintendent or a boss?

A. Mr. Hayes is more than a boss.

Q. What is he, as far as you know?

A. Mr. Hayes, as far as I know, the outline of his work, he is just sort of going around to see everything in general. If you have an order to get something out of the stockroom or something, and you want to go, like they furnish, say, glass protectors for jobs where you have the possibility of getting your eye chipped, you go to this stockroom to get them. You have to have an order written out by the foreman. You take this order to the factory office and it's almost always signed by Mr. Hayes or his secretary signs it there, and her name, she put her "pre" underneath.

Q. He does have a secretary?

A. The secretary signs for Hayes and she puts her "pre" underneath, if he is not in the office at the present time, and if anything is taken out of the factory, such as goods, it is almost always signed by Mr. Hayes.

Q. And what you you consider Mr. Hayes, as a workman?

A. I always considered him as an assistant foreman.

Q. Yes.

[fol. 355] A. An assistant superintendent; Mr. Heinrich's assistant.

Mr. Kleez: Cross examine.

Cross-examination.

By Mr. Reed:

Q. You don't know that Bennett has any right to make any recommendations for discharge, do you?

A. Any man with superiority over employees has the right.

Q. You don't know that, do you?

A. Yes, I do.

Q. How do you know it?

A. Because I know the procedure that follows. I am on the grievance committee of the union.

Q. Don't you know, as a fact, every recommendation of dismissal has to come from the foreman; has to be approved by Mr. Heinrich?

A. Yes. I say Bennett is an assistant foreman, too.

Q. But anybody can complain about anybody else; foreman or fellow workman or anyone else?

A. I said anyone with a superiority state can complain.

Q. You can complain if it's in the same category?

A. On the stool-pigeon system, you mean, yes.

Q. One employee can complain if a fellow workman doesn't do his work right.

A. Yes, but not from the firing end of it. He complains to the boss and the boss will straighten it out.

Q. But if the foreman looked into the matter and wanted the man dismissed, he would report to Mr. Heinrich?

A. Yes, he would. To the best of my knowledge, that's the way it was done. That's the way it has been done.

Mr. Reed: That's all.

Mr. Kleeb: That's all.

(Witness excused.)

EDWIN FAIRLY, a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

By Mr. Kleeb:

Q. You are Edwin Fairly?

[fol. 356] A. Yes, sir.

Q. You live at 1003 Langtry Street?

A. Yes, sir.

Q. You are employed at the Pittsburgh plant of the H. J. Heinz Company?

A. Yes, sir.

Q. How long have you been working for the company?

A. Practically, about, three and a half years.

Q. What department?

A. Spaghetti.

Q. Did you ever attend any meeting of the Heinz Employees Association?

A. No, sir—Yes, sir, one.

Q. When was that?

A. At Carnegie Music Hall, on the North Side.

Q. Do you recall whether or not that was the meeting of May 11, 1937?

A. I think it was.

Q. Did you see any officials of the company at that association meeting?

A. Well, I saw Mr. I. C. Bennett.

Q. Was he in charge of the meeting?

A. Yes, sir. He was on the platform with an attorney by the name of Mr. McDonald.

Q. Did you observe Mr. Hargraves being present?

A. I didn't notice Mr. Hargraves.

Q. Mr. Fairly, in your department at the plant did you ever observe any person or anyone going about the department soliciting membership in the association?

A. Yes, I have.

Q. Who?

A. There was a girl by the name of Hildebrand.

Q. Is that Catherine Hildebrand?

A. Yes, sir.

Q. Does she work in your department?

A. Now I couldn't say where she is at.

Q. When did you observe her soliciting signatures for membership in the association?

A. Right before the strike.

Q. At that time was she an employee in your department?

A. Yes, sir.

Q. Do you know in what capacity?

A. No, I couldn't say.

[fol. 357] Q. What did you observe this Hildebrand girl doing?

A. Well, she had a slip of paper.

Q. Did you see the paper?

A. I saw the paper.

Q. I show you Board's exhibit 7. Will you look at it and state if that is like the paper that Catherine Hildebrand had?

A. Yes, sir.

Q. The wording was the same?

A. Yes, sir.

Q. What did you observe her doing with that paper?

A. She was going to the women and asking them to sign up.

Q. You mean from girl to girl?

A. From girl to girl.

Q. Did you ever hear her asking anyone to sign?

A. I heard her ask these women to sign.

Q. Did you say you did not know what Catherine Hildebrand was doing at that time, what her work was?

A. Possibly she was a timekeeper.

Q. Do you know or don't you know?

A. I am not positive.

Q. Is it usual for that kind of thing to be done, for an employee to go around to the girls and solicit signatures for the papers?

A. No, sir.

Q. Was it done during working hours, of the girls?

A. Yes, sir.

Q. Are the girls in that department on piecework or hourly work?

A. Well, some of them are on piecework.

Q. Did you notice her approaching them, too?

A. Yes.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. Do you belong to the union?
A. The outside union.
Q. Are you an officer of it?
A. No, sir.
Q. Did you belong at the time you saw Catherine Hildebrand going around?
A. I was on the fence at that time.
[fol. 358] Q. Nobody made any complaint to the foreman that you know of that she was going around during working hours.
A. No, sir.
Q. Did you ever seen any union cards signed up during working hours?
A. No, sir.
Q. Not a one? The union didn't get any members during working hours?
A. I don't know whether they got any members or not.
Q. Bennett, this man you saw at the meeting, he is a fellow-employee? You know him, don't you?
A. I know of him. I don't know him personally.
Q. You don't call him an official of the company do you?
A. All I know is what I hear from the boys that work for him, he is an assistant foreman.
Q. Mr. Kleeb said, "Did you see any officials of the company at the meeting?" And you said, "I see Bennett."
You don't claim he is an official of the company?
A. No, that's the only one I saw.
Q. You don't think he is an official of the company, do you?
A. No, sir.
Q. He is not so regarded by the men, is he?
A. No, sir.

Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. Do you consider him a boss?
A. He wears the uniform of a boss.

Q. I mean, an official might be a president of a company or vice president, but I mean, do you consider Bennett a boss or supervisory boss at the H. J. Heinz Company?

A. Yes, sir.

Q. By the way, who is the foreman or forelady of this department you are in?

A. The forelady is Miss Helen Hans.

[fol. 359] Q. The foreman; no foreman?

A. Mr. Rooney, I believe, is in charge.

Q. Did you observe either one or both of those bosses being present when this Hildebrand girl was soliciting these things?

A. The floor lady was on the floor.

Q. Could she help but see Catherine Hildebrand doing this? Could she see her doing it?

A. Yes, sir.

Q. Did she stop her?

A. No, sir.

Q. Did you observe about how long or how often this Hildebrand girl would go around with this petition?

A. Well, I saw her once.

Q. And were you able to observe how much time she spent that one time in doing it?

A. Well, possibly 15 to 20 minutes.

Mr. Kleeb: That's all.

Recross-examination.

By Mr. Reed:

Q. In your department are there lots of people who wear white uniforms who are not bosses or foremen? There are, aren't there?

A. Yes, sir.

Q. That's what you referred to as a foreman's uniform?

A. Yes, sir.

Mr. Reed: That's all.

Examination.

By Trial Examiner Walsh:

Q. Mr. Fairly, just a moment. You testified that this Miss Hildebrand solicited membership by the presentation of this slip. Did she present it to you?

A. No, but I saw her, there was a lady right next to me, where I was working, and she come up to this lady and asked her.

Q. And you saw the slip at that time?

A. Yes, sir.

Q. Was it offered to you by your fellow-employee?

A. No.

Q. How did you happen to see it?

A. It was right alongside of me. She was on my right, and I happened to look at the paper.

Q. Were you solicited for membership by anybody into [fol. 360] this employees' association by being presented with such a slip?

A. No, sir.

Trial Examiner Walsh: That's all.

(Witness excused.)

Mr. Kleeb: If the Trial Examiner please, counsel for the Board expected the preliminary stages of this hearing to take longer than they did, and, as a result, only had eight witnesses present. He has now exhausted his witnesses, and has no more, and asks to have the hearing adjourned until tomorrow morning at 10 o'clock.

Trial Examiner Walsh: We will adjourn until 10 o'clock tomorrow morning.

(Thereupon, at 3:20 o'clock p. m., the hearing was adjourned to tomorrow, Tuesday, November 16, 1937, at 10 a. m.)

The hearing in the above-entitled was resumed, pursuant to adjournment on yesterday, at 10 o'clock a. m., Tuesday, November 16, 1937.

Before J. Raymond Walsh, Trial Examiner

Proceedings

Appearances:

Robert H. Kleeb, on behalf of the National Labor Relations Board.

Earl F. Reed, Esq., Donald W. Ebbert, Esq., and R. G. Bostwick, Esq., of the firm of Thorp, Bostwick, Reed & Armstrong, 2812 Grant Building, Pittsburgh, Pennsylvania, on behalf of the respondent.

Trial Examiner Walsh: The hearing will please come to order.

FRED DEARING, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. What is your name?
A. Fred Dearing.
Q. Where do you live?
A. 238 42nd Street, Lawrenceville.
Q. That's Pittsburgh, Pennsylvania?
A. That's right.
[fol. 361] Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. Yes, sir.
Q. How long have you been employed there, approximately?
A. Close to—About 11 years.
Q. What department are you in?
A. Mustard department.
Q. Who is in charge of that department?
A. Johnson Noel.
Q. State whether or not you attended a meeting of the Heinz Employees Association on May 11, 1937.
A. Will you give me that question again, please?

Mr. Kleeb: Read the question.

(Previous question read by the Reporter.)

A. I did.

By Mr. Kleeb:

Q. Where was that meeting?
A. North Side, Carnegie Hall.
Q. Did you see any bosses there?
A. Assistant bosses, yes.
Q. State whom you saw.
A. I. C. Bennett, Frank Capan, and Joe Greenier.
Q. Who is Frank Capan?

A. He is the assistant boss of the branch house stock of the shipping department.

Q. Joseph Greenier, he is what?

A. He is also an assistant.

Q. What department?

A. I believe it's the branch house stock, somewhere in the shipping department.

Q. Was this the first meeting of the association you have ever attended?

A. It was.

Q. Have you ever attended any since that time?

A. No, sir, that was the one and only.

Q. Prior to that meeting were you ever approached during working hours by anyone to sign up for the association?

A. I was; by a mechanic, Frank Kirschner.

Q. Does Frank Kirschner work in your department?

A. He is a mechanic in the mustard department, yes, sir.

Q. Ordinarily what is his job? I mean, what is he doing all day?

[fol. 362] A. He takes care of the repairing of the machines on breakdowns and so on, and in the filling and bottling, mustard department.

Q. Do you recall when it was Kirschner approached you, what month or what time of the month?

A. During May.

Q. Prior to this May 11th meeting you attended?

A. I presume it was, yes.

Q. State what occurred, please.

A. Well, Mr. Kirschner came up to me and he asked me if I wanted to join up, sign a paper, he had some kind of a statement in his hand.

Q. Excuse me a minute. I would like to show you Board's exhibit 7. Will you look at it, read it, and state if that is the kind of paper Mr. Kirschner showed you and wanted you to sign?

A. Yes, sir, that's the kind of a paper it was.

Q. Did you read the paper he had?

A. Had a few words, but I don't recall; it was typewritten at the top, just a few lines at the top of the sheet.

Q. And it was similar to this paper?

A. Similar to that, yes.

Q. Were there any signatures on it when you saw it?

A. Yes, one or two.

Q. What did Frank Kirschner say?

A. He asked me if I wanted to join, sign the paper. That was one day, and I told him, No, I would think it over; and the following day he come around again and he asked me if I had decided to sign up and I told him right out, No, as far as signing that paper or any other paper, if you are not up on your job it don't mean nothing. I said I wouldn't sign.

Q. Were you approached by anyone following that?

A. No, sir.

Q. Those were the only occasions when you were approached about this association?

A. Yes.

Q. Did any boss ever approach you, any foreman or supervisor?

A. No, sir.

Q. You never have signed into the association?

A. No, sir. I signed up with the A. F. of L. and that's where I am at today.

[fol. 363] Q. Was this petition circulated by Kirschner in full view of the boss of the department, if you know?

A. No, the boss wasn't around at that time. That took place up on the fifth floor in the spice department. There was no boss around.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. This Frank Capan and Joe Greenier are hourly employees, are they not?

A. I think they are, yes, sir.

Q. They work the same as the other people? They are leaders of the group?

A. I know they have uniforms. They are dressed as bosses, I know that.

Q. They were eligible to vote in the election you had over there, weren't they?

A. I don't think they were.

Q. You don't know whether they were or not do you?

A. I don't see why they should be; if they were bosses or assistants, they couldn't.

Q. You don't know whether they were permitted to vote or not, do you?

A. I don't know whether they voted or not, no.

Q. Did you have anything to do with the election?

A. What do you mean?

Q. Did you have anything to do with the arrangements for the election, the conduct of it, or anything of that kind?

A. No, sir.

Q. When did you join the A. F. of L.? Before that May 11th meeting or after?

A. It was, I presume, before the May 11th.

Q. You were one of the union members who went to the association?

A. I know I had attended one of the outside-union meetings, and then I joined, and that was official. That's when I joined.

Q. You were one of the union men that went to the association meeting on May 11th at Carnegie Hall?

A. One of the union men? That meeting was for all, that wasn't only for the union.

Q. Weren't you a member of the union then?

A. What?

[fol. 364] Q. You were a member of the union at that time?

A. Yes, sir.

Q. Were you in the picketing group, that picketed the meeting?

A. Not at the Carnegie Hall meeting, I wasn't picketing there.

Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. Do you know, personally, that Frank Capan and Joe Greenier wear the white uniform and hat of the boss; is that right?

A. Yes, sir.

Mr. Kleeb: That's all.

(Witness excused.)

MICHAEL J. HALLER, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Michael J. Haller?

A. Yes, sir.

Q. You live at 1019 East Ohio Street, North Side, Pittsburgh, Pennsylvania?

A. Yes, sir.

Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?

A. Yes.

Q. Approximately how long have you been employed there?

A. Four years, just about now.

Q. And in what department do you work?

A. It is called the B. G. department. I usually work in the chicken-cleaning department or the vegetable-preparation department house, but they are all confined in what they call the B. G. department.

Q. You clean chicken for the chicken that goes into chicken soup?

A. Yes, sir.

Q. And you prepare vegetables that go in vegetable soup?

A. Yes, sir.

Q. Who is boss of that department?

[fol. 365] A. Mr. Ladish.

Q. Did you ever attend any meetings of the Heinz Employees Association?

A. I attended the first meeting that they held at the Carnegie Music Hall up here on the North Side.

Q. That was about May 11, 1937?

A. I don't know the exact date, but it was around there.

Q. Was this, to your knowledge, the first meeting the association held at the Carnegie Music Hall?

A. It was the first meeting they held at the Carnegie Music Hall, yes.

Q. Did you see any bosses or foremen present at this meeting?

A. I saw Frank Capan, Joe Greenier, and Bill Sipple, was a straw boss.

Q. Did you see I. C. Bennett?

A. I. C. Bennett; he was the chairman of the meeting.

Q. Mr. Haller, were you ever approached by anyone to join the association?

A. No, sir.

Q. Do you belong?

A. To the association?

Q. Yes.

A. No, sir.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. Did Bill Sipple wear a foreman's uniform?

A. No, he doesn't, but he is a straw boss, and I took orders from him and I have known him to give orders.

Q. What is a straw boss. What do you mean by a straw boss?

A. A man who has supervisory capacity under the foreman, and he gives orders to men. He has a certain job that he is told to do, and he has the power to give orders to his men to do that job.

Q. Is no one who gives orders to anybody else eligible to belong to your union?

A. Please repeat that?

Q. Do you exclude everybody who gives orders to anybody else from your union?

A. No, but when they are in a supervisory capacity like [fol. 366] he is, that's more than an ordinary worker. I consider him as a straw boss.

Q. You say Bill Sipple is not eligible to belong to your union?

A. I won't say that. I won't say that he is not eligible to belong to our union.

Q. Then there was no impropriety in his being present at the association meeting, was there, that you saw?

A. Well, he could be at the meeting, I suppose.

Mr. Reed: That's all.

Mr. Kleeb: That's all.

(Witness excused.)

Mr. Kleeb: Carl Lukitsh.

CARL LUKITSH, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Karl Lukitsh?
A. That is right.
Q. You live at 1824 Brahm Street, North Side, Pittsburgh, Pennsylvania?
A. That is right.
Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. Yes, sir.
Q. How long have you been employed there, approximately?
A. I believe about four and a half years.

Trial Examiner Walsh: Speak louder, Mr. Lukitsh, please.
The Witness: About four and a half years.

Q. What department are you now in?
A. Noodle soup department.
Q. And who is the foreman of that department?
A. Mr. Young, Lawrence Young.
Q. Lawrence Young?
A. Yes, sir.
Q. Who is the forelady?
A. Miss Anna McKinley.
Q. When did you first know about the Heinz Employees Association and how did you learn of it?
A. Well, about three weeks before the strike I was push-
[fol. 367] ing baskets of noodle soup. They was filling noodle soup and Bob Andrew, the double seamer mechanic——
Q. Double seamer mechanic?
A. Yes, mechanic.
Q. What did he do?
A. He was going around to the girls. It was in the morning, I don't know exactly what day it was, and asked—and asking them to join the Heinz Employees Association.
Q. First, what do you mean by pushing baskets around?
A. Well, there are baskets on small trucks and when

the girls pack them up, and when they are full, and I push them away from the machine.

Q. So in doing that work you, of necessity, go to each girl?

A. No, there is just three girls there. It is the same place always. The baskets go in the same place.

Q. How did you know that Bob Andrews was asking these girls at the machines to sign up into the Association?

A. Well, when he got to these girls, these three girls were packing these baskets, I heard him.

Q. What did you hear him say?

A. He wanted to know—he asked the girls if they would join up with the Heinz Employees Association.

Q. And this was while the girls were working?

A. While the girls were working.

Q. Was it in full view of the foreman or forelady or either of them?

A. The forelady was there all the time, and the foreman, he was walking around the floor. He has charge of sterilizing, too.

Q. How many girls did you observe Bob Andrews approaching, even though you didn't hear what he said?

A. Oh, I guess about twenty of them.

Q. Did you observe that he was going from one girl to another?

A. He was going from one girl to the other.

Q. And there are how many girls about, in that department?

A. Well, right there they was running one machine. I think it was about, oh, twenty of them; I am not sure.

Q. Did you observe whether Andrews at the time you overheard his conversation with these girls have any paper [fol. 368] with him?

A. No, he did not have any paper.

Q. Did you personally know whether there was anything to be signed, and if so, where it was?

A. Well, I seen him taking a couple of girls over to a cupboard that was on the side there, a cupboard, and he had the paper in the cupboard, but I didn't——

Q. How do you know there was a paper in the cupboard?

A. I seen the paper over there when he had his hand over at the cupboard.

Q. Did you see any of the girls signing the paper which he had?

A. I seen a few of them.

Q. Were you ever handed the paper by Bob Andrews to sign?

A. No; he come and asked me if I wanted to join. He asked me after he was through talking to all the girls, and then he came to me and asked me if I wanted to join.

Q. And what did you tell him?

A. I told him, "Nothing doing."

Q. State whether or not you ever requested to see the paper or read the paper?

A. No, I didn't.

Q. What is the work of Bob Andrews, if you know?

A. Well, when a machine breaks down, he repairs it.

Q. In that department?

A. In that department there, yes.

Q. And if a machine isn't broken down, what is he doing?

A. Well, he walks around and watches it, and he takes every hour, he takes so many cans and tests them.

Q. Well, is it customary for the employees to circulate among the employees in that department with papers and petitioners, and things of that sort?

A. No, sir.

Q. From your time working there, was this an unusual procedure for Andrews to be circulating this petition?

A. Yes, sir.

Q. Did you observe the forelady or foreman ever stopping [fol. 369] or reprimanding Andrews for spending his time doing this?

A. No, sir, they didn't say anything to him.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. This man who was speaking to the girls is a fellow workman?

A. He is a fellow workman.

Q. Not a foreman or superintendent at all?

A. Not a foreman; no, sir.

Q. But his job is to fix up machines that break down?

A. When they break down.

Q. And you didn't see him offering any paper to these girls when he was talking to them while they were working, but you only saw him talking; is that right?

A. He was talking to them.

Q. That is a very noisy department with the empty cans coming down that conveyor; isn't it?

A. Yes, sir.

Q. And yet you could hear what he was saying?

A. No, I didn't hear what he was saying, not to those other girls, but just to these three girls that was packing baskets. I was standing right beside him.

Q. Well, it is just as noisy there?

A. Well, you could hear what they was saying. I was right beside him. I was writing a tag out at that time to put in the basket.

Q. So you heard him talking to them about the association?

A. That one girl there.

Q. To one girl?

A. Yes.

Q. So that you are——

A. There was three around, but he went to each girl at a time.

Q. All right, but you didn't hear what was said to anybody but one girl; is that right?

A. The one girl there.

Q. And the rest of it you are guessing at what his conversation was with the girls?

A. Well, because after he went to all the girls, then he came to me.

Q. Well, but you didn't hear anything said except to one girl; is that right?

[fol. 370] A. To one girl.

Q. And the times that you say anybody sign a paper, he took them over to a cupboard, and took the paper out of a cupboard; did he?

A. I saw him taking two girls, about two or three girls, I am not sure; I don't remember exactly, over to a cupboard.

Q. Did he have that paper in his pocket or in the cupboard?

A. It was laying in the cupboard.

Q. It was laying in the cupboard. Whose cupboard was it, his cupboard?

A. That is the cupboard where they keep the aprons in and the scales where they weight the noodles.

Q. So that any time you saw any signing take place, it was over at this cupboard and not in the open in front of all the employees?

A. It was at the cupboard.
Q. Yes.

Mr. Reed: That is all.

Redirect examination.

By Mr. Kleeb:

Q. Did any of the girls that were approached by Andrews ever tell you what he said to them?

Mr. Reed: That is objected to. If Andrews said anything to them, let the girls say so.
Trial Examiner Walsh: Sustained.
Mr. Kleeb: That is all.

(Witness excused.)

Mr. Kleeb: Sophie Kos.

Sophie Kos, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Sophie Kos?
A. Sophie Kos.
Q. Do you spell that K-o-s?
A. K-o-s.

Trial Examiner Walsh: Will you repeat the spelling?
Mr. Kleeb: Sir?
[fol. 871] Trial Examiner Walsh: Will you repeat the spelling?
Mr. Kleeb: K-o-s, Sophie Kos.

By Mr. Kleeb:

Q. You live at 709 Chestnut Street, North Side, Pittsburgh, Pennsylvania?
A. Yes, sir.
Q. Speak out loud, Miss Kos, please, so we can all hear you.

Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?

A. Yes, sir.

Q. About how long have you been employed there?

A. About eight years.

Q. And in what department do you work?

A. Spaghetti filling.

Q. And is the spaghetti filling department in the spaghetti building?

A. Yes.

Q. Who is your forelady?

A. Anna Tresiack.

Q. T-r-e-s-i-a-k?

A. Yes.

Q. Who is the general foreman of your department? Who is your foreman?

A. Mr. Bruns is my foreman, but Mr. Brooks is in charge of the whole spaghetti building.

Q. Mr. Bruns is the foreman of your department?

A. Yes.

Q. About how many girls work in the spaghetti filling department? About how many?

A. About how many? Well, sometimes they have only two lines going, sometimes they have four lines going, so——

Q. If two lines are going, about how many girls are there?

A. I would say about 25.

Q. And if your lines are going about how many girls? 50?

A. I don't know quite how many girls occupy one machine. There is about 10 girls to a machine I would say, see.

Q. And how many machines?

A. Well, there were—there is four going right now.

Q. That would be about 40 girls?

A. About 40 girls.

[fol. 372] Q. Were you ever talked to, that is, you or your department by any boss about unions?

A. Yes, about a month before the strike, Mr. Bruns called two girls at a time off of their jobs, and he was talking to us about union. He mentioned several places that had a union and it wasn't much account. And then Mr. Brooks called us after working hours, a group of us girls down on the turn floor, and he said to us if the outside union would come in we wouldn't be working steady as we are now; if

our department works, we will work, if not, we will stay at home; we wouldn't be transferred from one department like we were. He said the Heinz Company give us work all during depression, and he said that the Union is only a money-making scheme. He said, "There is a foreman works —there is a butcher works upstairs with you. Ask him about the union he belongs to. He belonged to two unions and lost two jobs and he wouldn't belong to another union."

Q. And who was it that said this?

A. Mr. Brooks.

Q. And where did this take place?

A. On the third floor in the spaghetti building.

Q. And you work on what floor?

A. I work on the sixth floor.

Q. And how did you happen to be on that floor at that time?

A. Well, our forelady said there was a meeting called on the third floor.

Q. And what time of the day was this?

A. It was after working hours. I believe it was about 5 o'clock we got done that day; I am not sure what time.

Q. Could you tell us about how many girls attended that meeting?

A. There were about 25 to 30 girls.

Q. And Mr. Brooks, you say, addressed this group?

A. Yes, Mr. Brooks.

Q. And is that the same Mr. Brooks you stated was in charge of the spaghetti building?

A. Yes.

Q. I believe you testified that the day before Mr. Bruns talked to girls two at a time?

A. Yes.

[fol. 373] Q. Who was along with you when Mr. Bruns talked to you?

A. Marie Milewski. She worked right with me.

Q. Where were the two of you when Mr. Bruns talked to you?

A. On the sixth floor on the side.

Q. And who called you aside? Who told you Mr. Bruns wanted to talk to you?

A. Our forelady came over and said, "Mr. Bruns wants to see you."

Q. That is Ann Tresiack?

A. Yes.

Q. Was anybody around except the three of you when Mr. Bruns talked to you?

A. Well, no, nobody was around only the two of us.

Q. You and Marie Milewski and Mr. Bruns?

A. Yes, and Mr. Bruns.

Q. Now, will you please tell us exactly as best as you can recollect what Mr. Bruns said to you?

A. Why, I don't know. He was talking against the union and I don't know, he mentioned several places that had a union and it wasn't much account. And I know he mentioned John Aught. He used to work in our department. He said they had a union where is is working at and he is not working now.

Q. Is he a worker at Heinz?

A. He used to be a worker but he quit. Where he is working at now, they either had a union or they were out on strike. Anyhow, they had a union.

Q. That was one of the companies that Bruns referred to; is that what you mean?

A. Yes.

Q. Before these two occasions when Mr. Bruns and Mr. Brooks talked to the girls, had you ever been approached by anyone about the associations before that?

A. There was no association in the plant at that time.

Q. And about when did these two conversations with Mr. Bruns and Mr. Brooks occur with reference to the strike?

A. Well, Bruns asked me about four or five weeks before the strike. I don't remember which.

Q. No. I mean these two conversations when Mr. Bruns talked to you and Miss Milewski and Brooks talked to the group of girls?

[fol. 374] A. Yes.

Q. When did that happen?

A. About a month before the strike. And Brooks talked to us about three weeks before the strike.

Q. After these statements made by Mr. Bruns and Mr. Brooks were you, during working hours, ever approached by anyone to join the Heinz Employees Association?

A. Yes, I was.

Q. By whom were you approached?

A. By Catherine Hildebrand.

Q. And who is Catherine Hildebrand?

A. She is a worker in my department.

Q. Do you know what she does?

A. Yes, she used to run a double seamer on a soup machine.

Q. And is she doing that now?

A. She isn't in our department now. After this association, I think she was transferred over to the advertising.

Q. But before the strike she was in your department?

A. She was in my department.

Q. Now, tell us what happened about this asking you to sign the association, Catherine Hildebrand asking you?

A. Well, it was in our department she asked me the first time, and I refused her. Then she went down to the dressing room and she asked me down there, and I still refused her.

Q. Did she have any paper with her?

A. Yes, she give me a paper.

Q. I show you Board's Exhibit 7. Will you look at that, please, and state if that is like the paper that Catherine Hildebrand had when she approached you?

A. It was on the order of that only it didn't have so much reading on it.

Q. Did you read it?

A. Yes, I read it.

Q. And was it about the association?

A. Yes.

Q. Were there any signatures on it when you saw it for the first time?

A. Not the first time, but the second time.

Q. Did you sign it the first time?

[fol. 375] A. No.

Q. And the second time when she approached you there were some signatures on it, you say?

A. Yes.

Q. Did you sign it that time?

A. No.

Q. The first time you were approached, was it during working hours?

A. We just got done working.

Q. And the second time where was it that you were?

A. Down in our dressing room.

Q. Did you sign that time?
A. No, I did not.
Q. Were you approached again?
A. Yes, up in my department.
Q. During working hours?
A. During working hours.
Q. Did you observe Catherine Hildebrand going to other girls in the department during working hours?
A. Yes, I did.
Q. Did she have a paper with her?
A. Yes, she did.
Q. And you saw her?
A. I saw her.
Q. Was this done in full view of the forelady?
A. Yes, Anna Tresiack was right there.
Q. Did you observe her stopping or reprimanding Catherine Hildebrand?
A. She didn't say anything.
Q. What would Catherine Hildebrand ordinarily be doing at her work? I mean, would she be at work?
A. Yes, she would be on the machine.
Q. And should be, as far as you know, have been at work during all of the time?
A. Yes.
Q. Was it necessary for her to leave her work to pass or to go around to the girls? Did she have to leave her work to do that?
A. She left her work, yes.
Q. Did you personally observe or see other girls who worked there signing this paper?
A. Yes, I saw all of the girls on our machine and on the next machine signing up during working hours. Some signed before working hours and some signed during working hours.
Q. Are you girls on piece work?
[fol. 376] A. No, I am not on piece work.
Q. The girls in your department are paid by the hour?
A. Yes, by the hour.
Q. Do you know whether everyone in the department signed, or not?
A. No; there was three girls that worked right around me, they didnt' sign up.
Q. What three girls? Do you know their names?
A. Anna Kozolup, Anna Valdengo, and Anna Bogolitz.

Q. And how do you know that these three girls did not sign?

A. They worked right with me and they said they will not sign that paper.

Q. And did you observe anything occurring after that when they didn't sign?

A. Yes; Mr. Bruns and our forelady, they were talking together, and I seen when they pointed these three girls out to our foreman. They said, "These were the three girls that didn't sign up." And the girls come over to me and they said, "Oh, we are pointed out. We might as well sign up."

Q. And who was pointing these girls out and to whom was the person pointing?

A. Anna Tresiack was pointing out to Bruns these three girls, and Bruns looked at them, so you know they were talking about them.

Mr. Kleeb: Cross examine.

Cross examination:

By Mr. Reed.

Q. You don't know whether they were pointed out because they wouldn't sign up or because they were talking too much about unions, do you?

A. Well, we were signing up that afternoon.

Q. But don't you know that Mr. Brooks called the girls together and scolded everybody for spending more time talking about unions than they were working; wasn't that what he said?

A. He didn't mention anything to me about that.

Q. Well, you know it was a frequent thing to have meetings of the girls, wasn't it? He called them down there often, didn't he?

A. He was talking to us about a union.

[fol. 377] Q. Now, answer my question. Did not Mr. Brooks frequently call the girls together to talk to them?

A. Yes, he called the girls together to talk to them.

Q. And didn't he talk to them about cleanliness and about talking too much and sticking to their jobs and various other things about the work?

A. No, he didn't mention anything about that.

Q. And didn't he scold the girls because they were spending more time talking about the union than they were doing their work?

A. No.

Q. He didn't say anything to you about that?

A. No.

Q. Or any of the other girls about that?

A. No.

Q. You were one of the leaders in getting the union cards signed up, weren't you?

A. No, I wasn't.

Q. Well, you were active in getting girls to sign up union cards, weren't you?

A. No.

Q. At no time?

A. At no time. I didn't ask anybody.

Q. Did you go to Mr. Heinrich on one occasion and ask him something about the union?

A. I asked him before. I asked them when they were passing this association around, what it was all about.

Q. What did he say to you?

A. Well, he said to me, "If I tell you it is good, they will say because I am superintendent, that I shouldn't say it is any good."

Q. He wouldn't tell you anything about it, would he?

A. No, he didn't tell me anything about it.

Q. When did you go to Mr. Heinrich?

A. Before I went to any outside meetings.

Q. And you say that Mr. Brooks never scolded you or talked to you about making trouble among the girls and causing dissension?

A. No.

Mr. Reed: That is all.

Mr. Kleeb: Just one or two questions.

[fol. 378] Redirect examination.

By Mr. Kleeb:

Q. Did you sign the petition?

A. Yes, I signed when Catherine Hildebrand said to me, "If you don't sign this petition," she said, "the company will think you have something to do with the outside." So I signed.

Q. And why did you sign? I mean, what was the reason?
A. Well, I thought it is for my job, that is all.
Q. What do you mean by that? What do you mean, it is for your job?
A. I thought if I wasn't going to sign I would lose my job because it was for the company.

Mr. Kleeb: That is all.

Recross-examination.

By Mr. Reed:

Q. Nobody told you that, did they?
A. No, nobody told me that.
Q. You worked there eight years and never lost a day's time, had you?
A. No.
Q. You hadn't lost any time, had you?
A. Oh, I was laid off now and then, yes.
Q. How much time have you lost in the whole eight years?
A. I don't remember.
Q. Didn't you say to Mr. Brooks that you didn't want to lose any time, that you were afraid of a strike?
A. Oh, yes, I said that.

Mr. Reed: That is all.

(Witness excused.)

Marie Milewski, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Marie Milewski?
A. Yes.
Q. How do you spell that?
A. M-i-l-e-w-s-k-i.
[fol. 379] Q. You live on the Evergreen-Mt. Trop Road, North Side, Pittsburgh, Pennsylvania.
A. Millville, Pennsylvania.

Q. Are you now employed in the Pittsburgh plant of the Heinz Company?

A. Yes, I am.

Q. About how long have you been employed?

A. Six years.

Q. And in what department do you work?

A. Spaghetti-filling department.

Q. That is the same department that Sophie Kos works in?

A. Yes.

Q. And your foreman is Mr. Bruns.

A. Yes.

Q. And your forelady is Ann Tresiack?

A. Yes.

Q. Were you present in the courtroom when Sophie Kos testified?

A. Yes; present now.

Q. Did you hear her testimony in answer to my questions?

A. Yes, I did.

Q. Were you present at the meetings that she referred to, when Mr. Bruns and Mr. Brooks spoke to the girls, Mr. Brooks to the girls and Mr. Bruns to the two of you?

A. Yes, I was right there.

Q. And you are the Marie Milewski that was with Miss Kos when Mr. Bruns spoke to the two of you?

A. Yes.

Q. Is the testimony of Miss Kos of what occurred at those two meetings correct?

A. Yes. There was only one thing: When this company wanted us to sign up with this association one of the timekeepers, a girl, came around with yellow slips for the girls to sign up, and she asked me, and I said, "I am not signing up anything."

And she said, "You don't have to sign anything if you don't want to. It's for your own good." That's all she said.

Q. I show you Board's exhibit 8, Miss Milewski, and ask you if that's what you mean by "yellow slips".

A. Yes, that's what it was.

Q. That has been identified as a membership card of the Heinz Employees Association. Who was it was getting

[fol. 380] these signed. Who was it that was going around to get names?

A. This girl was Anne Vargo.

Q. Does she work in your department?

A. She is a timekeeper on the third floor, in the office.

Q. In the office?

A. Yes.

Q. Was she going through your department in working hours?

A. Yes.

Q. Did she approach you with one of these yellow cards?

A. Yes, she did.

Q. Did you observe Catherine Hildebrand going around getting signatures for the association?

A. I did.

Q. Did this Vargo girl approach you to get your signature on one of these yellow cards like Board's exhibit 8 before or after Catherine Hildebrand went around?

A. That was after.

Q. Were you personally approached during working hours by Catherine Hildebrand to sign any paper?

A. No, I wasn't. Just during—Down in the dressing room, that was the only time.

Q. I show you Board's exhibit 7. Will you look at it, please, and read it, and state whether or not that paper is like or similar to the one Catherine Hildebrand asked you to sign?

A. It's similar to the one I seen.

Q. And were there signatures on the paper Catherine Hildebrand had?

A. Yes, there were quite a few.

Q. Did you sign?

A. I did.

Q. At the time you signed that paper were you a members of the A. F. of L. local?

A. No.

Q. Why did you sign that paper?

A. Well, everybody else was, and she come over the third time to me, and she asked me, and she said, "Well, you are signing up for your own good," so I signed up.

Q. Did you observe Catherine Hildebrand soliciting signatures to such a paper during working hours?

A. Yes, sir, I did.

[fol. 381] Q. Did you observe whether or not it was in full view of the foreman and forelady?

A. Forelady. I seen the forelady.

Q. You saw the forelady. The forelady was present?

A. Yes, she was right there.

Q. Will you please—Strike that.

How long after you signed the petition or paper like Board's exhibit 7 did the Vargo girl come around to get you to sign one of these membership cards like Board's exhibit 8?

A. It was about—I guess about two weeks before the strike.

Q. I mean, how long after you signed the petition, if you can remember? Was it a week, or two days,—

A. It was about a week, I guess.

Q. Was anyone with her?

A. No, just herself.

Q. Did you observe her go to the various girls with these cards?

A. Yes, sir.

Q. Did you observe any boss; forelady or foreman, present when she was doing this?

A. I think our forelady was there.

Q. Did you sign the card, yellow card?

A. No.

Q. What did the Vargo girl say when you refused?

A. She said, "Oh, you don't have to if you don't want to. It's for your own good."

Q. Have you ever been approached to pay any dues of the association?

A. No.

—. Have you ever attended any association meetings?

A. No.

Mr. Kleeb: That's all.

Cross-examination.

By Mr. Reed:

Q. You joined the union after that, didn't you?

A. I did.

Q. And you are still a member of it?

A. Yes, I am.

Q. These meetings Mr. Brooks had, that wasn't an unusual thing; he often had meetings?

A. Yes, he did.

[fol. 382] Q. And discussed discipline and cleanliness, and a lot of other things, didn't he?

A. Yes.

Q. And there had been a good deal of talk, dissention among the girls, about the union, before he mentioned it in this meeting, hadn't there?

A. I didn't hear anything.

Q. Don't you know that there was trouble and he was complaining about them talking too much about the union and not working?

A. He didn't say anything about that.

Q. This girl you said was a timekeeper, she is an hourly worker the same as the other girls?

A. Yes, she is still timekeeper.

Q. And she was just a timekeeper part of the time?

A. She was always timekeeper, only when we are not busy she works on a machine.

Q. She is eligible to belong to your union, isn't she?

A. Oh, yes, I guess.

Q. She could belong if she wanted to?

A. Oh, yes, I guess.

Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. This question: Ordinarily would this timekeeper, Miss Vargo, be in your department, working in your department?

A. Yes, she did.

Q. What kind of work does she do?

A. She works on the machines. Inspects——

Q. Is she a timekeeper?

A. She is a timekeeper now. When we are very busy she is a timekeeper.

Q. At the time she was circulating these yellow cards, what was her work then?

A. She was in the office.

Q. Doing what, do you know?

A. I don't know what she does in the office.

Q. Did her work keep her in the office?

A. Yes.

Q. And would she ordinarily be out among the girls, at that time?

A. No.

Q. Was this, then, an unusual thing, for her to be out in the plant?

[fol. 383] A. That's something unusual for her to do.

Mr. Kleeb: Cross-examine.

Recross-examination.

By Mr. Reed:

Q. That office you are talking about is just a little partition right on the floor, isn't it?

A. It's on the third floor.

Q. And she works in there part of the time and out on the machine part of the time, doesn't she?

A. The only time she works on the machine is when we are not busy, and there is only one machine working, but when there is three or four machines running she is in the office.

Q. There was nothing unusual in her being out with the girls where you were at that time, was there?

A. It was unusual because there were three or four machines running at that time.

Q. You have seen her frequently out of the room, in the room with the rest of the girls, haven't you?

A. No, not at that time.

Q. No- at that time?

A. No.

Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. Did she work on any machine that day?

A. No, she was in the office.

Mr. Kleeb: That's all.

(Witness excused.)

Mr. Kleeb: Might I ask for a five- or ten-minute recess at this time?

Trial Examiner Walsh: We will have a five-minute recess.

(Thereupon a short recess was had.)

Trial Examiner Walsh: The hearings will please come to order.

VERONICA GAJEWSKI, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

[fol. 384] Direct examination.

By Mr. Kleeb:

Q. You are Veronica Gajewski?

A. That's right.

Q. You live at 149 Home Street, Lawrenceville, Pittsburgh, Pennsylvania?

A. That's right.

Q. Speak out, Miss Gajewski, loudly, so everybody can hear you.

A. That's right.

Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?

A. I am.

Q. How long have you been employed there?

A. About three and a half years.

Q. In what department?

A. Bottling.

Q. Is the bottling department one large department?

A. It is.

Q. How many foreladies are there in charge of this department?

A. There is five foreladies in bottling.

Q. Isn't there any—Strike that.

And what kind of work do you do?

A. I bottle pickles.

Q. Are you called a pickle worker?

A. That's right.

Q. And how many of the five foreladies are in charge of pickle workers?

A. There is three in charge of pickle workers.

Q. Will you name them, please?

A. Agnes Funke, Augusta Topnick, and Minnie Litner.

Q. And the other two foreladies are in charge of what kind of work?

A. On the labeling side.

Q. The girls who label the pickle bottles, you mean?

A. Yes.

Q. Is there a foreman in charge of the entire bottling department?

A. Yes, there is, John Palivoda.

Q. Do you know, is he superior or boss of the five foreladies?

A. Yes, he is.

[fol. 385] Q. Prior to the strike at the plant, May 24, 1937, were you ever approached by any of your superiors regarding unions?

A. Yes, about three weeks before the strike John Palivoda came up to inspect my work, which he never did before, and he stopped, and while he was inspecting my work he started talking about union to me.

Q. State what his conversation was about unions?

A. He asked me what union I was for, and I wouldn't give him any satisfaction. I didn't want to tell him. And he told me to declare myself, and I told him I didn't commit anything that I should declare myself.

He said, "If you had any disputes at home, you wouldn't call any outsiders to settle your disputes, you would settle them among yourself." And I didn't say anything to him.

He said, "Well, why don't you declare yourself?" And I didn't say anything, so he told me it was a cowardly act.

Q. Was anything said by Mr. Palivoda about the Heinz Employees Association, as such, whether or not you belonged?

A. No, he didn't say anything. He wanted to know whether I would sign up—for what union I was for, but I wouldn't tell him.

Q. About how long did Palivoda engage in this conversation with you?

A. Oh, I would say about a half hour.

Q. Are you on piecework?

A. Yes.

Q. And this half hour he talked with you was during your working hours?

A. During my working hours.

Q. And while you were working, actually working?

A. Yes.

Q. Did anything unusual happen following that conversation of Palivoda?

A. Well, one day when I was going into the return room—that's where the girls return broken and speck pickles—they were giving out these yellow slips of some kind. I seen the girls having yellow slips.

Q. I show you Board's exhibit No. 8.

A. I didn't see it distinctly.

Q. You didn't see the yellow slips?

[fol. 386] A. No, I just seen the yellow slips.

Q. Then you don't know whether Board's exhibit 8 is the kind of yellow slip you are talking about, or you saw?

A. No. While I was there——

Q. Explain this a minute. What do you mean by "return room"?

A. That's where we take our broken pickles and speck pickles we don't use.

Q. Pickles that are broken and speck pickles you take back to the return room?

A. That's right.

Q. What happened this day, about the return room?

A. I was there this day, taking my pickles back in this return room. They have cases there, Bill Sipple takes care of that back there, and all these girls were going back there getting these yellow slips, and I took my goods back there, emptying my dishes, and "Gustie" Topnick stopped me and asked me if I signed up for the union, and I told her I wasn't for the one and I wasn't for the other, and that's all she said to me.

Q. How do you know that these workers, along with you, that were going into the return room, got yellow slips, or were signing yellow slips?

A. I seen them as I was coming out.

Q. Did you know whether or not those yellow slips had anything to do with the association?

A. That's what I figured they were for.

Q. Why did you figure that that's what they were for?

A. Well, one girl went out, and, as they were going, they were saying they were giving the yellow slips for the company union.

Q. You heard the girls talk about that?

A. Yes.

Q. Before this occurred had you ever been approached by anyone to sign anything for the association?

A. No.

Q. Do you know Hilda Smith?

A. Yes.

Q. Is she in your department?

A. Not right now.

Q. Was she before the strike?

A. Yes.

Q. What was she doing then?

[fol. 387] A. Well, she used to be an olive bottler, and, when they quit bottling olives, she was an inspector.

Q. And at the present time do you know where she is?

A. She is working in the girls' dressing room.

Q. As an inspector the work of how many girls would she inspect?

A. Six girls.

Q. Are there more than six girls among the pickle girls?

A. Oh, there is more.

Q. About how many?

A. I wouldn't know. I would say about sixty girls, maybe more.

Q. And Hilda Smith's work was confined to the inspection, the inspecting the work of six pickle girls, six pickle workers?

A. Yes.

Q. State whether or not it was customary for Hilda Smith, as an inspector, to go about among all the sixty girls during working hours.

A. No, it wasn't.

Q. Did you ever observe Hilda Smith going among all the girls?

A. Well, as she was going by she stopped with me one day. She asked me to join.

Q. Was this after this incident of the return room?

A. That was before.

Q. Before that. In your prior testimony you stated that you were not approached by anyone to join the association. Do you wish to change that testimony?

A. Yes, I do.

Q. Did you observe—Strike that.

Will you please state what Hilda Smith did or said to you?

A. All she asked me was whether I was going to sign, and she didn't say anything else to me.

Q. Did you ever—Strike that.

Did she have a paper with her?

A. No, I didn't see one.

Q. Were you one of the girls whose work she inspected?

A. No.

Q. Did you observe her going to the other girls in the department?

A. Oh, not at that time.

[fol. 388] Q. Did you observe her later doing it?

A. No.

Q. Did you ever observe her going among all the girls?

A. No.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. Did Hilda Smith formerly bottle olives and just work part of the time inspecting, and go from one table to another, occasionally?

A. Yes.

Q. She is an hourly worker, the same as the other girls, isn't she?

A. Yes.

Q. And this Bill Sipple is an hourly worker, isn't he?

A. I don't know whether he is or not.

Q. He is not a foreman, is he?

A. He is an assistant foreman.

Q. He doesn't wear a foreman's uniform, does he?

A. Yes, he does. I have taken orders from him.

Q. He is eligible to belong to your union, isn't he?

Mr. Kleeb: I object to any questions about Bill Sipple. I don't believe this witness testified about Bill Sipple.

Mr. Reed: She said Bill Sipple was in the return room where they got their card.

The Witness: That is where he worked. I didn't say he was giving the card, because I didn't see. That's where he usually works at.

Q. You don't know whether he gave out the card or not?
A. No, I don't know.
Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. Did you ever sign up as a member of the association?
A. No, I didn't.

Mr. Kleeb: That's all.

(Witness excused.)

[fol. 389] HERMAN PFEFFER, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Herman Pfeffer?
A. I am.
Q. You live at 625 Evergreen Avenue, Millville, Pennsylvania?
A. I do.
Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. I am.
Q. Speak out in answer to these questions.
A. I am.
Q. In what department?
A. Bottling department.
Q. Is that the same department in which Veronica works?
A. It is.

Q. And I believe John Palivoda, according to Miss Gajewski's testimony, is foreman?

A. He is.

Q. What is the nature of your work, Mr. Pfeffer?

A. Pulling trucks in the bottling department to be labelled and when they fill the trucks up with pickles I pull the trucks out and put an empty truck in to be filled again.

Q. And you take them to the labelling division?

A. Yes.

Q. And after they are labelled, do you take them from there?

A. No, after they are labelled, I have nothing to do with them.

Q. Your job is to haul the trucks of filled pickles to the labelling department?

A. It is.

Q. Do you know "Julie" Fisher?

A. She is a forelady of the labellers No. 2 conveyor.

Q. Do you recall anything unusual occuring in your department the latter part of April, about a month before the strike?

A. About a month before the strike in the afternoon, Julie Fisher came up to me and said, "I hear you are [fol. 390] strong with the outside union. Do you think that's right? After such a fine speech Mr. Heinz had this afternoon in the auditorium, I don't see how anybody could do such a thing."

Q. Had a speech been made by Mr. Heinz that day?

A. There was.

Q. Do you know who was present, in general at that meeting at which Mr. Heinz spoke?

A. Mr. Mueller just returned from California.

Q. I mean the audience, was it made up of employees, or who?

A. Yes, it was the entire plant in there.

Q. And what was the reason for this meeting?

A. Mr. Mueller returned from California at that time.

Q. Is he an officials of the company?

A. He is a vice-president.

Q. What was the subject matter of Mr. Heinz speech to which Miss Fisher referred?

A. I don't know.

Q. Did you hear the speech?

A. I don't know, but I don't remember what the speech was.

Q. That is Howard Heinz, president of the company?

A. Yes.

Q. Did anything unusual occur after this conversation you had with Miss Fisher.

A. Well, the next day John Palivoda stopped me about 10 minutes to 8:00 and he asked me whether I was going to the outside union that evening or not and I told him I thought I was.

Q. What did he say to that?

A. He said, "Didn't this company treat you right during the depression?" And I told him it did.

Q. What else; relate all the conversation as you remember it.

A. Then he asked me if he ever mistreated me or anything like that and I couldn't answer that and so he said, "You will be called upon further," something like that.

Q. Was anything said during the conversation for or against unions?

A. There was.

Q. Will you state what Palivoda said about unions?

A. He began by saying that this outside union were [fol. 391] nothing but a bunch of hunkies, most of them weren't even citizens, and he told me, "Boy, I had you figured as strong for the inside," and then he said, "Frank Novak was up in one of the halls dead drunk leaning over the bar claiming he had 500 members.

Q. Frank Novak is the——

A. President.

Q. —president of the local?

A. Yes.

Q. Were you asked by anyone to join the Heinz Employees Association?

A. I was. In the bottling department, the first name is Joe, I don't know what his last name is. He asked me if I would sign and I told him I didn't want to make 22½ cents an hour again.

Q. Did he approach you during working hours?

A. He did.

Q. When was it with reference to this conversation you had with Palivoda?

A. The same day.

Q. Before or after Palivoda spoke to you?

A. After.

Q. By the way, how long did you and Palivoda talk that day?

A. Oh, about 20 minutes, I would say.

Q. Was it during working hours?

A. It was.

Q. Did you observe this fellow Joe whose last name you don't seem to know approaching others in the department to sign up?

A. I don't remember seeing him.

Q. Did he have a paper with him when he approached you.

A. I did.

Q. I show you Board's exhibit 7 and ask you to look at it and read it and state whether or not that paper that he had was like that one.

A. I didn't notice that much writing on the one he had.

Q. Did the paper have anything to do with the association?

A. It did.

Q. Did you observe any signatures on the paper when you saw it?

A. There was signatures on it, but I didn't go that close [fol. 392] to it, to read them. They was written out with pencil.

Q. Did anybody else approach you that day about the association, after this fellow Joe talked to you?

A. I don't remember.

Q. Did any boss at any time after this conversation with Joe approach you about the association?

A. Well, "Julie" Fisher, she asked me how come I told Joe I had already made 22½ cents an hour, and I told her I did. She said, "Did you?" and walked away.

Q. When did you make 22½ cents an hour?

A. During the depression.

Q. What are you making now?

A. About 63.

Q. Were you ever told by any boss or official to sign the application for membership in the association?

A. No.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. This 22 cents an hour was when you first started there, wasn't it?

A. No, it wasn't. When I first started there I made 25 cents an hour, and three months later I got a raise to 27½ and then I began to get cut.

Q. And what do you get now?

A. About 63.

Q. Your work puts you in close touch with this Julia Fisher. You talk to her most of the time, don't you, a good deal of the time?

A. The only time, at noontime.

Q. A good deal of the time you are working where you talk to her, are you not?

A. Yes. She gives me the orders.

Q. This forelady?

A. Yes.

Q. And there wasn't anything unusual in your discussing what was going on around the plant with her, was there?

A. What do you mean by that question?

Q. Well, you discuss everything that's going on about the plant with her, don't you?

A. Just things concerning what we had to do.

Q. Well, everybody was talking about unions around the plant at that time, weren't they?

[fol. 393] A. They probably was.

Q. That was a subject of common conversation all the time, wasn't it?

A. It was common around the plant, all right.

Q. This speech of Mr. Heinz had nothing to do about unions?

A. No.

Q. Mr. Heinz frequently makes a speech to the employees around Founders Day or holidays?

A. Around that time he did.

Q. And Mr. Mueller was a man who had been in the plant many, many years, and had gone to California and returned; is that right?

A. That's right.

Q. And they gave this meeting for him in the auditorium?

A. That's right.

Q. And Mr. Heinz spoke?
A. Yes.
Q. You were there?
A. Everybody was there.
Q. There wasn't a word said about unions, or anything of the kind?
A. No.
Q. So, in saying about Mr. Heinz' speech, this woman just admired the speech; it didn't have anything to do with unions, did it?
A. What she told me she heard I was going for the outside union; she didn't say the speech,——
Q. Well, she didn't say the speech had anything to do with unions did she?
A. She said, "How could you do something like that?"
Q. She didn't say that the speech had anything to do with unions at all?
A. No.

Mr. Reed: That's all.
Mr. Kleeb: That's all.

(Witness excused.)

Mr. Kleeb: Joseph Pintus.

[fol. 394] Joseph Pintus, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Joseph Pintus?
A. Yes, sir.
Q. Do you live at 215 Belleau Street, North Side, Pittsburgh, Pennsylvania?
A. Yes, sir.
Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. Yes, sir.

Q. How long approximately have you been employed there?

A. About 1929, March 7, around thereabouts.

Q. In what department do you work?

A. Mixed pickle at the present, and I am assigned to it, but I work all over the factory when the business is slack in my department.

Q. Is the mixed pickle divided into a couple of divisions?

A. It is.

Q. What are those divisions?

A. There is the bulk pickle, the mixed pickle, and mustard department; that is in the same building.

Q. Does that department take up more than one floor?

A. It does.

Q. How many?

A. About five.

Q. How many floors for the bulk?

A. The same amount.

Q. You mean two floors for the bulk or five floors for the bulk?

A. Five floors in the bulk.

Q. And how many for the mixed?

A. About five.

Q. That would be ten floors altogether?

A. It is in the same building. It is the same height.

Q. Oh, I see. How many floors are there in the building?

A. There is five floors.

Q. So that on each of the floors there is the division of [fol. 395] the bulk, and on each of the floors there is a division of the mixed?

A. Yes, sir.

Q. And you are in the mixed pickle division?

A. Yes, sir.

Q. When did you first hear or know anything about the Heinz Employees Association?

A. About two weeks before we came out on strike, May 24th.

Q. Tell us what happened.

A. We were beginning to work on asparagus that morning, and I went down to the second floor as I was directed by one of the foremen to work on asparagus. I got downstairs about one minute and a half before the whistle blow,

when my foreman come to me with a paper asking me to sign it if I wish; it wasn't compulsory. He says, "It would be up to you."

Q. What is the foreman's name?

A. Joe Powell. And just at the time he was speaking to me about that the whistle had blowed. I had the paper in my hands.

Q. Excuse me a minute. I want to show you Board's exhibit 7. Will you look at it and state if that is the paper which your foreman, Joe Powell, had and gave to you? I mean a paper like this.

A. It was similar to this, yes, and on the opposite side he asked me to sign on it, see.

Q. But it had this typewriting on it?

A. Similar to that; yes, sir. It had typewriting right on it.

Q. Was it about the Heinz Employees Association?

A. It was.

Q. Now, will you state what your foreman, Joe Powell, said when he gave you this paper?

A. He says, "Now, Joseph, they asked me to go around to every man and ask them to sign on this paper if they wanted to." And I asked him, "Is it compulsory, Joe? Do you have to sign it?" "Well, no," he says, "no, no, no." He says, "It is up to you." He says, "if you want to sign it, it is all right, and if you don't, it is all right, too."

Q. Did you observe any other signatures or names on the paper?

A. There was about four or five at that time. It was early in the morning.

Q. What time of the morning was it?

[fol. 396] A. Just about one minute and a half before the whistle, approximately one minute or two just before the whistle blowed.

Q. Were any names of bosses on that paper?

A. They were.

Q. Can you state the names of any boss or bosses?

A. There was Charlie Hebner. He belongs to the mixed pickle department.

Trial Examiner Walsh: What is that name, please?

Mr. Kleeb: That is H-e-b-n-e-r.

The Witness: Yes, sir.

By Mr. Kleeb:

Q. Is he a boss in the mixed pickle department.

A. He is. Well, he is a boss. He gives orders and we have to obey them and carry out his work.

Q. Does he wear the uniform of a boss?

A. He does.

Q. And do you recall any other bosses' names on the paper?

A. There was a boss in the cooper shop, Louis. I can't remember his last name, because we don't get around there very often, Louis something. Bregowski, or something, Bregowski. He is a foreman in the cooper shop. And Jake Leger, he is up from the fifth floor where they mix relish; he is also a foreman or a straw boss or assistant foreman, and he is a director out there, anyhow.

Q. By the word "director" what do you mean?

A. Well, he directs the work, the men that has to carry out his orders that is sent up to report to him for work.

Q. These two men you have named besides Hebner, do they or do they not wear the uniform of a boss?

A. One of them doesn't and the two of them does.

Q. Hebner you say does?

A. He does, yes, sir.

Q. And who is he?

A. Louis, the foreman from the cooper shop, he also does.

Q. Does you work require you to go from floor to floor to cover all five floors or not?

A. Not all five floors, no.

Q. Do you know how many foremen, approximately, or bosses there are in this building?

A. About four that I consider are foremen, that always [fol. 397] has something to say about there and bossing around, yes, sir.

Q. Do you include in that four Hebner?

A. Including Hebner.

Q. And Louis?

A. No; he is in the cooper shop department.

Q. Oh, I see. That is not the pickle department?

A. Well, no, it belongs to the same—it comes under the same heading because we use the barrels and they make them or repair them.

Q. I see.

A. He takes orders from the same headquarters where I do, from Mr. Koehrer. He is assigned to mixed pickle.

Q. Did you sign this paper for Powell?

A. When he asked me to sign it I asked him, as I stated before, if it was compulsory. He said, "No." "Well," I said to him, "I will wait and consider where the majority signs. I will sign also where the majority signs, so we will see also where the majority will sign, on this company union or the A. F. of L." So I didn't sign it. I signed with the majority on the A. F. of L.

Q. Were you approached by anyone after Powell approached you about the association?

A. No, that was the ending of that.

Q. Have you ever signed anything for the association?

A. No.

Q. Have you observed any change in the attitude of the foremen towards you since the strike and the election?

Mr. Reed: Just a minute, I didn't hear that question.

(Question read as above recorded.)

Mr. Reed: I think this ought to be confined to what was said or done. A change of attitude may mean a frown.

Mr. Kleeb: Well, I think it is relevant. This man certainly has shown that he did not join the association at the request of a boss and he admits joining the A. F. of L. union. I think that it is perfectly relevant to show the difference now of the bosses towards him than existed prior to the election.

Trial Examiner Walsh: Overruled. The *The* question may be answered.

By Mr. Kleeb:

Q. Will you answer the question?

[fol. 398] A. State it again, please.

Q. Have you observed any change of attitude of your bosses toward you since the strike and the election than existed prior to that?

A. Yes, quite a difference.

Q. State the difference.

A. They don't seem to care to speak to us as freely as they used to before that.

Trial Examiner Walsh: Mr. Pintus, you are testifying to the change of attitude toward you?

By Mr. Kleeb:

Q. Yes, change of attitude toward you, not others. Towards you?

A. Exactly.

Q. Now explain what that change has been. Explain what you have observed to be that change of attitude towards you.

A. They are more brief, and they are not as friendly as they used to be.

Q. And how many years have you been at the plant?

A. I have been there since 1929, in March, about eight years.

Q. Now can you——

A. About that.

Q. Can you describe anything that they did or the bosses have done that is brief or shows this change of attitude? How was that expressed?

A. As far—they tried to find faults with your work and tried to accuse you of doing your work incorrect.

Q. And did that kind of thing exist before the strike?

A. Not in my case; I don't remember of anything in that way.

Q. Now, this finding fault quicker and so forth, that you stated, does that apply to all your bosses in general or to any particular ones?

A. Well, just this one where I work for.

Q. Who is that?

A. Joe Powell.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. Now, Joe Powell only works there part of the time; in the tomato season he works out somewhere else; doesn't he?

[fol. 399] A. I think the biggest part of his time is there at the factory, as near as I can recollect.

Q. Well, in the tomato season?

A. Just tomato season is only once a year.

Q. Well, he has been away in the tomato season this year, hasn't he?

A. Oh, yes. I don't know whether on tomato season, but I missed him at the factory.

Q. He was away six or seven weeks, wasn't he?

A. Something like that, yes.

Q. And did anybody find any fault with you during that time?

A. I didn't work very much in the mixed pickle room after since he left. We were scattered all over since the business went kind of slack this time of the year in the mixed pickle room.

Q. Did anybody find any fault with you in any of the six or seven weeks that Joe Powell was away?

A. Not in the mixed pickle, no, sir.

Q. Anywhere?

A. No, not since this Joe Powell had went away.

Q. Now, Joe Powell is an hourly worker, isn't he?

A. Is he what?

Q. He is an hourly worker? He gets paid by the hour?

A. That I don't know.

Q. And works with the men part of the time and supervises part of the time; isn't that right?

A. You mean Joe Powell?

Q. Yes.

A. Oh, I don't know that.

Q. Well, you said you took your orders from Mr. Koehrer. You regard Mr. Koehrer——

A. As the manager in the department.

Q. Yes. And Joe Powell is just a fellow worker, isn't he?

A. He takes orders from Mr. Koehrer.

Q. The same as you do?

A. Is a foreman.

Q. The same as you do?

A. To give his orders to me.

Q. Yes.

A. To carry them out.

Q. You said he took his orders from Koehrer the same as you do; didn't you?

A. Yes.

[fol. 400] Mr. Kleeb: He did not.

Mr. Reed: I wrote it down here, don't say he did not.

Trial Examiner Walsh: I think he may clarify this mat-

ter by answering this question. Mr. Pintus, will you answer the cross examiner's question so that we may have it clear what you meant a little earlier when you said that you as well as Mr. Powell—or it is alleged you have said that you as well as Mr. Powell took orders from Mr. Koehrer? Now, did you take orders? Do you wish us to understand that you took orders direct from Mr. Koehrer or through Mr. Powell?

The Witness: Through Mr. Powell and sometimes through Mr. Koehrer also. A few times I have taken direct from Mr. Koehrer. In the time of the flood we had to go downstairs and remove things, put things to safety in the cellars. When I was on another job, my regular job, and Mr. Koehrer come up and swinging his hands, "Downstairs. Get dow'-stairs and help them fellows to do this and that," hollering around. Well, it was a direct order by Mr. Koehrer where at the same time I had been put on another job by Mr. Powell, Joe Powell.

By Mr. Reed:

Q. Now, Charles Hebner is an hourly worker? He gets paid by the hour the same as you do; doesn't he?

A. I don't know.

Q. And this Louis of the cooper shop is an hourly worker and gets paid by the hour the same as you do?

A. I don't know that either.

Q. You would call anybody a boss who passes around orders to anybody else; is that it?

A. I do.

Q. Everybody but a laborer is a boss, as you regard it; is that right? Do you regard everybody as a boss except a laborer?

A. Everybody that directs and gives me orders to carry out to do my work.

Q. Even if they are only passing them on from somebody else, that makes them a boss, the way you look at it?

A. Well no. If it is in my department, I consider that, but anyone on the outside of my department, I don't consider that. I will consult my foreman to see if that is legal to obey those orders or not.

Q. Well, when you say that the bosses' names were on this [fol. 401] paper, the bosses talked to you—you are talking about people who pass on orders to you whether they are

paid by the hour or by the month or whether they work on the machine or what they do: aren't you?

A. Yes, sir.

Q. All right. Now, you know that the uniform is a thing that the men get for themselves, and that many people wear uniforms who are not foremen; don't you?

A. Well, I can't prove that.

Q. Well, do you know that there are lots of people that wear foreman's uniforms, what you call a foreman's uniform, that are not foremen?

A. Up until the time that we come out on strike, only the foremen were allowed to wear a certain kind of uniform down there.

Q. You can buy any uniform you want to, can't you?

A. Well, I never knowed that, but it wasn't customary for everyone to wear the same uniform as the foremen did before the strike, and after the strike, why, it scattered out that you could wear the same material, the same uniform made out of the same material as the foremen.

Q. Now, you know that the Heinz Company has had 69 years without any labor trouble up to the time of this strike, don't you?

A. Well, I don't know, that is too far back for me.

Mr. Kleeb: Just a minute, I object to the question as irrelevant.

Mr. Reed: Why, the witness has indicated an unfriendly attitude, and I have a right to inquire what may be the basis of that.

Trial Examiner Walsh: The objection is overruled.

By Mr. Reed:

Q. You have heard it talked about all up to the time of the strike that this is the first strike at the Heinz Plant; didn't you? You heard everybody talking about that, that that was the first strike?

A. Naturally.

Q. And——

A. Mr. Heinz stated that himself.

Q. Yes. And there was a demand made by your union on Friday and a strike on Monday; you know that; don't you?

A. What?

Q. You are one of the stewards of the union; aren't you?
[fol. 402] A. Yes, in the mixed pickle department, exactly.

Q. Pfeffer, the man that just testified ahead of you, is a union steward, isn't he?

A. Yes.

Q. Well, now, you know that the union made a written contract demand on Friday and pulled the plant on Monday next, don't you?

A. No, I don't because I wasn't appointed a steward at that time, or nor I wasn't in Pittsburgh at that time when the strike was called about. I was about 150 miles out of Pittsburgh.

Q. Well, you were on the picket line during the *the* strike weren't you?

A. Not when the strike was called off. On the day that it was called off, I wasn't in Pittsburgh at that time.

Q. You were during the strike?

A. When I returned from the country, I returned also to work, and I found they were on strike. Then I hung around that morning and the next day, and about the third or fourth day I came on the picket line.

Q. Well, now, don't you think that the failure of foremen to talk as freely to the men after the strike is due to a natural feeling that they had been treated unfairly in the strike?

A. Who? The foremen?

Q. That the company had——

A. Well, I don't know that, anything about unfairly.

Q. Do you think it was fair to pull a strike when you asked for a contract on Friday, to pull one on Monday?

Mr. Kleeb: I object to that question. Now, just a minute. I object to the question and believe the witness stated he was out of the city when the strike occurred. I don't think it is material, relevant, or competent to ask this witness whether he thought it was fair or not to pull the strike.

Mr. Reed: Well, he is testifying to the most vague kind of an unfriendly failure to talk freely, the attitude on the part of the foremen. Now, we certainly have a right to inquire [fol. 403] whether that is because of any union discrimination against these men or the result, the natural consequence, of this strike.

Trial Examiner Walsh: Overruled.

Mr. Reed: I didn't hear that.

Trial Examiner Walsh: The objection is overruled.

(Question read as above recorded.)

A. That was up to the officials of my local, to decide whether it was fair or not. I was only a member in that local at that time.

Q. I am not blaming you for doing it. I am asking you if you thought that was fair. Do you think that is fair?

A. I think it was fair enough for the company to negotiate and come to a better understanding and to give out opinions as they did, and let the union go ahead and call a strike. If they had agreed there wouldn't have been any strike.

Q. That doesn't answer it. Now, I am going to ask you this question again. You can answer it Yes or No.

Do you think it was fair for the union to call this strike on Monday when they just submitted a contract on Friday?

A. Yes, in my opinion.

Q. Well, then, don't you think that has something to do with the attitude of the foremen in not talking so freely to the men since the strike?

A. I can't answer that question.

Q. You haven't lost any time since the strike? I mean, you have not been laid off or suspended?

A. Oh, yes, I have been laid off.

Q. What were you laid off for?

A. Well, on account of not being enough work to go around for all of us.

Q. Well, but you said they were finding fault with you. You haven't been laid off for any fault of yours, or anything of that kind?

A. No, not for any reason like that, no.

Q. And no foreman——

A. I explained myself and proved myself that I was as near right as I possibly could be in my—in the accusations.

Q. No foreman has said anything to you about your work or suspended you or disciplined you in any way since the [fol. 404] strike? All you are complaining about is that they don't talk as freely; is that right?

A. Yes.

Mr. Reed: That is all.

Mr. Kleeb: That is all.

Examination.

By Trial Examiner Walsh:

Q. Mr. Pintus, just a moment, please?
A. Sir?
Q. Do you give orders?
A. I don't.
Q. To the men?
A. No, sir, I am not. I am only a laborer.
Q. You work in a group of men or independently?
A. In a group of men, and I did at one time independently.
Q. The orders for the group of which you are a member come from whom?
A. From my foreman.
Q. And his name is Powell?
A. Powell, yes, sir, when I worked for him on that day. There are three in that building. Sometimes I work for one maybe a day or two, and sometimes I work for another one on the next floor—I have to take orders from him. Sometimes I go down below in the cellar, work for another one, and I have to take orders from that one again.
Q. You consider, then, that your relationships with Mr. Powell are different from your relationships with the other men with whom you are working?
A. Yes, sir.
Q. And that difference makes Powell in your mind a foreman?
A. It does.
Q. The other men working with you, so far as you know, consider him a foreman, consider Powell a foreman. Do the other men working with you in your group consider Powell as a foreman?
A. Yes, sir.
Q. You say that he wears a uniform that it is customary for the foremen to wear?
A. Yes.
Q. You consider him a foreman? Suppose he didn't wear that uniform.
[fol. 405] A. That is one reason.
Q. Suppose he didn't wear the uniform?
A. And if he gave me orders I still would consider him as my foreman.

Q. Suppose that you would be told that he was an hourly rated employee of the company; would you still consider him a foreman?

A. That wouldn't make any difference. He would still be my foreman because he would be giving me orders to carry out my work.

Q. So it is the fact that he is a source of orders for you that makes him a foreman?

A. Yes, sir.

Q. And similarly, in the eyes of your fellowworkers, so far as you know?

A. Exactly.

Q. You rather generally expressed the attitude of the foreman towards you after the strike has changed, that they did not talk to you so freely, and things of that kind. Now, have you yourself—I want to be clear about that—have you yourself had such an experience with the foremen and, if so, what experience exactly have you had that has made you arrive at the conclusion that their attitude toward you has changed?

A. Well, just recently I was off on a Monday and I come to work on a Tuesday, and in my time box where the time cards are someone else's card was placed in my little compartment. And I looked at the number on my box, and it was my number on there, and I expected my card to be in there. So I takes this card out and I punches it, pretending that it was put in the proper place, my card, but it was another man's card. I looked at it to see if it was punched all right, that is all I looked at, and I went over—I was to work in another department.

When I got there, the timekeeper or someone from my department had called this other department and told them that I had punched the wrong card. So I went back with the card to get my correct one, and she gave it to—she was there waiting with it.

So, when I went to punch it, it was about two minutes behind then, because the whistle had blowed already. So this foreman, Charlie Hebner, that is also foreman in the [fol. 406] mixed pickle, and I worked for him several times, he was just passing by, and I says, "Look, Charlie," I says, "I can't punch now." I says, "I will be two minutes behind."

Now, other times he would see that it was corrected in a more satisfactory way, but he shrugged his shoulders

and said, "I can't help it. What can I do? I can't help it." And he just shoved me off that way. So I didn't think it was—which he never used to act that way before. He would always try to help us on an occasion of that kind.

Now, there was one instance. So then I asked the timekeeper to straighten the card up, and she told me, "Well, go over there and tell about it, and they will fix it up for you." Just like that.

So that is one instance in one case there where I didn't make, which they never acted that way before. It was more of a friendly—they were more friendly towards one another.

Trial Examiner Walsh: I think that is all I have.

Further Cross-examination.

By Mr. Reed:

Q. This Charlie Hebner that you speak of, doesn't wear a foreman's uniform, does he?

A. Well, as I said before, before the strike only foremen used to wear those uniforms.

Q. Well, Charlie Hebner doesn't wear a foreman's uniform now, does he?

A. Well, I don't know what you consider it, but I still call it a foreman's uniform because they used to wear—foremen used to wear those uniforms before the strike.

Q. What is the difference between a foreman's uniform and any other uniform?

A. Well, the uniform that I wear and the other laborers wear, they are striped overalls.

Q. Some of them wear grey, don't they?

A. Yes, the grey the foremen used to wear those before, but now whoever wants to wear them now can wear them.

Q. Well, what do you call a foreman's uniform, grey or white?

A. Grey.

Q. Don't some of the foremen wear white?

[fol. 407] A. Yes, but they are different. I consider them, that they are a little higher up than a foreman. They have more authority.

Q. Then you think a white uniform denotes a superintendent or manager or something?

A. Assistant, assistant department manager, or something in that order.

Q. And grey means a foreman's uniform?

A. A foreman. That is what I consider them.

Q. Mr. Koehrer, the foreman, doesn't wear any uniform, does he?

A. No, I never seen him in a uniform. I don't see why they don't try and make him wear something than the clothes he does wear.

Q. That is all.

A. I don't think he is the sole owner of the company, either.

By Trial Examiner Walsh:

Q. Mr. Pintus——

A. And I think they should put a uniform on him also.

Q. Mr. Pintus, a moment ago you said that now—I suppose you mean since the strike—anybody may wear one of these grey uniforms, am I correct?

A. To my recollection, yes, sir.

Q. What do you mean to suggest by that, that there was some kind of an official announcement that this uniform previously confined to a certain group has now been made the privilege of all the employees?

A. No, there was no official announcement, but it just seems that anyone who wants to wear that kind of a uniform may.

Q. On previous times it seemed as though they might not?

A. Yes.

Q. And just how would a new employee have known it before the strike that he should not wear that kind and since the strike know that he may wear it? How do you know that sort of thing?

A. Well, I know when I first started there, it was shown to me, and proved to me that I should wear overalls, not no uniforms, and everyone—everyone else that labored there wore overalls. And this uniform that I am speaking of, and the overalls are two different things, because they are only trousers, and a jacket, and the overalls we wear are with a bib, on striped.

Q. And when you went there, you provided yourself with [fol. 408] overalls because all of the other workers wore overalls.

A. At that time, when I started there, we could wear any kind of overalls. I know I wore blue denim overalls when

I first started there for a while. Then there was a law passed there in the company that the uniforms must be all alike.

Q. Well, now, have any employees like your self provided themselves with a grey uniform?

A. Yes.

Q. Some of them?

A. Some of them has.

Q. Bought them themsalves, so far as you know?

A. Yes, sir.

Q. How do you account for that if there wasn't any announcement to the effect that they might do that?

A. Well, I never—I never heard of any official announcement about it that you were permitted to wear the same uniform as a foreman, but I seen them going to the stock room and coming back with a different color uniforms.

Q. You got your uniform—those uniforms, are they purchased at the plant, the grey uniforms?

A. Yes.

Q. And what about your overalls?

A. They can be purchased there also.

Trial Examiner Walsh: That is all.

Mr. Kleeb: Just this question.

Redirect examination:

By Mr. Kleeb.

Q. Who was it that informed you when you started to work that you had to equip yourself with overalls?

A. A foreman by the name of Ollie Thompson.

Q. Did he explain to you or not the different kinds of uniforms that were to be worn?

A. Yes. Well, he explained to me the difference between what I had been wearing and what he insisted on me to wear, the prescribed uniform of the company.

Q. What I mean is this, were you ever told by any foreman or boss the distinction between uniforms, why some wear some and why some wear another?

A. No.

[fol. 409] Q. Were you ever told that?

A. No, just what I have seen and heard from one man to another in every day conversation and with the experienced that I had since I been there.

Q. The bosses wore different kind of uniforms than ordinary workers?

A. Yes, sir.

Mr. Kleeb: That is all.

(Witness excused.)

Mr. Kleeb: Anthony Grugurich.

ANTHONY GRUGURICH, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct examination:

By Mr. Kleeb:

Q. You are Anthony Grugurich?

A. Yes.

Q. You live at 1900 Rhine Street?

A. Yes.

Q. Pittsburgh, Pennsylvania?

A. Yes.

Q. Are you employed at the Pittsburgh Plant of the Heinz Company?

A. Yes.

Q. About how long?

A. Four years.

Q. What department?

A. Mixed pickle.

Trial Examiner Walsh: Speak a little louder, Mr. Grugurich. What department.

The Witness: Mixed pickle.

By Mr. Kleeb.

Q. The same department that Joseph Pintus works in?

A. Yes.

Q. State whether or not you attended the May 11th meeting of the Heinz Employees Association at the Carnegie Music Hall?

A. Yes, I attended that time, about May 11th, was 8 o'clock.

Q. You did attend that meeting?

A. Yes, in the evening.

Q. Did you observe who was in charge of the meeting?

[fol. 410] A. Yes.

Q. Who?

A. That was Roberts, timekeeper from machine shop. He was right in the front door when I go in, and he gave me piece of cards, slip the cards, and I don't know what was on the card. I put it in my pocket.

After meeting over, I went out and I throw.

Q. And you what?

A. After I went out, and I throw the cards. And I was in there, and I see Mr. Bennett, and, of course, he divided whole plan into 15 divisions, and each division was appointed some committee.

Of course, the timekeeper from machine shop, the Mr. Roberts, he was appointed in there also. He belong—he used to belong to the 57 Club, member.

Q. Who divided the plant into 15 divisions?

A. Mr. Bennett.

Q. That is Mr. I. C. Bennett?

A. Yes.

Q. Was this done at the meeting?

A. Yes.

Q. What was the purpose, as you understood it, for dividing the plant into 15 divisions?

A. Well, I didn't understand that. They divide into 15 divisions, and they want to control the whole factory by each divisions. They was mostly appoint in there girls, and I think—I am not for sure—timekeepers, too, but I know just Mr. Roberts, he was appointed in there in the 15 subdivisions.

Q. Mr. Roberts was appointed?

A. In the machine-shop division.

Q. As what was he appointed?

A. A committee.

Q. Committeeman?

A. Committeeman.

Q. Was there a committeeman appointed for each of the divisions?

A. For each division. I don't know how many.

Q. The only one you knew was Mr. Roberts?

A. Mr. Roberts, yes.

Q. And this was done at the meeting at Carnegie Hall?
A. Yes.
Q. State again, please, what Mr. Roberts does.
A. He is the timekeeper in the machine shop, and he used to—he was before a 57 Club official.
[fol. 411] Q. What was the 57 Club?
A. The 57, H. J. Heinz Club.
Q. A social club?
A. A social club, yes.
Q. Who appointed Roberts as the committeeman of the machine-shop division?
A. Well, what can I say, I don't think so anybody appoint him by the employees.
Q. How did he got the job? Do you know?
A. Well, when I attended in there, the first, Mr. I. C. Bennett. He had a piece of paper, and he read about the Wagner Labor Relations Act, and then he start—I think he start to divide divisions from each department, and some departments together, and, well, of course, when I was in there nobody allowed anything to say, even the association men, members.
Q. Well, who wouldn't allow them to say anything?
A. Well, the members from the floor.
Q. Why couldn't they say anything?
A. Why, because I figured to myself they was scared. They was scared they going to be somebody appointed from local, from Local 325 into the association, in the committee.
Q. You figured who was scared that would happen?
A. Well, they was scared, that Bennett and all the rest of them. That is what we figured, see?
Q. Did you see any other bosses at this meeting?
A. No, I didn't see.
Q. Did you ever join the association?
A. No, never did approach them.

Mr. Kleeb: Cross-examine.

Cross-examination.

By Mr. Reed:

Q. This timekeeper down there that you speak of is an hourly employee?
A. Yes.

Q. He wears overalls and a black shirt?
A. Yes.
Q. You don't claim he is the boss or anything of that kind, do you?
A. Well, he isn't the boss, but he is very popular in there.
Q. He is what?
A. He is very popular.
Q. Very popular?
[fol. 412] A. Yes.
Q. Well, then, he is not a boss, is he?
A. Oh, no.

Mr. Reed: That is all.
Mr. Kleeb: That is all.

(Witness excused.)

Mr. Kleeb: Joseph Pavlakovich.

JOSEPH PAVLAKOVICH, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Joseph Pavlakovich?
A. That is right.
Q. You live at 1021 Vineal Street, North Side, Pittsburgh, Pennsylvania?
A. Yes.
Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. Yes, I am.
Q. Speak out.
A. Yes, I am.
Q. Approximately how long have you been employed there?
A. About eight years and a few months.
Q. And in what department do you work?
A. Mixed pickle.
Q. And who is generally in charge of this department?
A. John Koehrer.

Q. Who is your foreman?
A. He is Joe Powell.
Q. He is Joe Powell?
A. That is right.
Q. You are in the same department as Joseph Pintus?
A. That is right.
Q. Did any official or boss of the company ever discuss unions with you?
A. No, I didn't.
Q. Do you know Mr. Heinrich?
A. Yes, I do.
[fol. 413] Q. Superintendent?
A. Yes.
Q. Did he ever discuss unions with you?
A. Well, about two weeks before the strike he came around, and he asked me how long I worked and how much I am making an hour.
Q. Please speak slowly, will you?
A. He says—he asked me how much I am making an hour and how long I am working down there, and he says how do I like my job, and everything else.
And he says, "Well, what union do you favor?"
I says, "No one yet."
So he says, "Do you believe everything what the outside organizers are telling you?"
I says, "Not all of it, most of the stuff I do."

Trial Examiner Walsh: We aren't hearing you. You will have to speak much louder than that.
Mr. Kleeb: Yes, it is necessary so that we can hear you.

A. (continuing) I says—he says, "Do you believe everything what the outside organizers are telling you?"
I says, "I don't believe, but most of the stuff I do."
So he says, "Well, if you don't believe all the outside organizers, you go up and ask Frank Kirschner, because he was once an A. F. of L. man, and he says that the A. F. of L. is no good."

By Mr. Kleeb:

Q. Do you know who Frank Kirschner is?
A. Yes, I do.
Q. Who is he?
A. He is one of them Heinz Association committeemen.
Q. Do you know in what department he works?

A. Well, he works in three departments. He is a mechanic, fixing the machines.

Q. But not in your department?

A. No, not in mine, but I am working in the elevator. I am going the five floors in the building, and he is fixing the machines on the fourth floor right in front of the elevator.

Q. So you know who he is?

A. Yes, I know who he is.

Q. About how long was Mr. Heinrich talking to you?

A. I would say about two weeks before the strike.

[fol. 414] Q. I mean, how long, about how much time?

A. Oh, about 15, 20 minutes.

Q. Was it during working hours?

A. Yes.

Q. And you stopped work to talk?

A. Yes.

Q. Did you ever see Frank Kirschner after Mr. Heinrich's suggestion?

A. No, I never did.

Mr. Kleeb: Cross-examine.

Cross-examination.

By Mr. Reed:

Q. You were operating an elevator then?

A. That is right.

Q. Mr. Heinrich went to you and told you there was a complaint about your leaving your elevator, didn't he?

A. No, he never say nothing about it.

Q. He told you that the girls were complaining that you were soliciting them for a union, didn't he?

A. No.

Q. Wasn't that the occasion of his talking to you?

A. (Witness shakes head negatively.)

Trial Examiner Walsh: What was your reply. What did you reply to that question?

The Reporter: The record shows the witness nodding his head negatively.

Trial Examiner Walsh: You had better give a negative word, instead of shaking your head.

The Witness: Well, I just say, Mr. Heinrich when he came to me, he says "Which union do you favor?" And I told him I don't favor either one yet.

Trial Examiner Walsh: But to the examiner's question?

The Witness: Yes.

By Mr. Reed:

Q. I asked you if it were not true that Mr. Heinrich talked to you about leaving your elevator and going and talking to the girls about unions.

A. He didn't say nothing about that.

Q. Never mentioned that to you?

A. No.

Q. Then or any other time?

A. Never.

Q. Was there ever a complaint about your frightening [fol. 415] the girls and trying to get them to join the union?

A. No.

Q. You never heard of that?

A. No, sir.

Q. And Mr. Heinrich never talked to you about it?

A. No.

Q. This just happened in this way, he came over and asked you if you liked your job; that is all?

A. That is right.

Q. You had had some trouble with Mr. Heinrich four or five months before this, in which you were laid off for leaving the job, hadn't you?

A. Laid off for leaving the job?

Q. Yes.

A. I never heard of such a thing.

Q. You were not laid off for a week for leaving the job and going through the plant with a pail of olives one time?

A. Yes, I was, last year.

Q. About how long ago?

A. Last year. I was off a week for giving the girls olives.

Q. And leaving your job?

A. No. I was right on the elevator. I was hauling olives up and down, and a girl came over and said "Give me some olives," and I give her some.

Q. You went over into another department, fifty feet away, with a pail of olives, and gave them olives?

A. A girl came over; I gave her olives.

Q. You have been unfriendly with Mr. Heinrich ever since?

A. We are good friends, but two weeks before the strike he just asked me which union I favor. That's all he says to me about union.

Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. Where were you when you gave these olives to the girls?

A. Right in the elevator.

Q. That was the only place you were when you did give them away?

A. That's right.

Q. And it was for that you were laid off?

A. Yes.

[fol. 416] Mr. Kleeb: That's all.

(Witness excused.)

Mr. Kleeb: If the Trial Examiner please, may I ask to adjourn the morning session until this afternoon at one-thirty?

Trial Examiner Walsh: We will reconvene at one-thirty.

(Thereupon, at 12:15 o'clock p. m., a recess was taken until 1:30 o'clock p. m.)

After Recess

(Whereupon the hearing was resumed, pursuant to recess, at 1:30 o'clock p. m.)

Trial Examiner Walsh: The hearings will please come to order.

Mr. Kleeb: Steve Kuss.

STEPHEN KUSS, a witness called by and on the behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Stephen Kuss?
A. Yes, sir.
Q. And you live at 561 Stanford Avenue, Westview?
A. Yes, sir.
Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. Yes.
Q. I want you to speak loudly so everyone can hear your answers you give. Will you, please?
A. Yes.
Q. How long have you been employed by the Heinz Company?
A. 17 years, I work on the H. J. Heinz Company. It will be 18 years November first, now.
Q. Going on 18 years?
A. Yes.
Q. What department do you work?
A. In the cooperage department.
[fol. 417] Q. Who is boss of that department?
A. Johnnie Koehrer.
Q. And who is general superintendent of the plant?
A. That's it——
Q. Who is superintendent of the plant?
A. Well, that's he, himself, too.
Q. Do you know Mr. Heinrich?
A. Oh, Mr. Heinrich, yes.
Q. What is he? Is he the big boss?
A. Yes, that the big boss.
Q. Mr. Kuss, state whether or not you were ever approached by Mr. Heinrich about unions. Were you, Yes or No?
A. Well,——
Q. Were you ever?
A. Yes.
Q. When?
A. That was May, but I am not sure—11th or 12th.

Q. Of this year?

A. Of this year, yes.

Q. Where were you when you were approached by Mr. Heinrich?

A. I was met Mr. Heinrich on the fourth floor, on the elevator, up and down.

Q. You run the elevator?

A. Yes. He stopped me on the fourth floor.

Q. And it was around the 11th or 12th of May, I believe you said.

A. Two fellow, and he was together.

Q. Who was with him?

A. Some other fellow by the name of—the man that makes the mayonnaise.

Q. Do you know his first name?

A. I know his first name but I don't know last names.

Q. Tell us what Mr. Heinrich said and what you said; tell us slowly.

A. When Mr. Heinrich met me on the fourth floor he asked me, "How long you work at the Heinz Company?"

I said, "17 years."

He said, "I heard you were at a meeting last night."

I says, "Yes, Mr. Heinrich. You know," I said, "we will meet tonight again." That was Friday.

Q. What meeting were you talking about?

A. You know, meeting of the outside union. I said, "I [fol. 418] am going to the meeting tonight again, Mr. Heinrich."

He said to me, "Steve, we don't want you to go on the outside meeting," he said; "you stay here where you are. I give you a better job and more money."

I say, "I don't need no better job. I need more money, Mr. Heinrich." That's what I said to him.

Q. Was anything else said?

A. He said, "Well, the union don't give you a job." He said, "Company always give you a job."

Q. Anything else?

A. That's all.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. Were you a member of the union from the start, over there, when it first started?

A. Well, I am not sure, exactly, what day it was that it was start. I think April sometime, outside union, you know, I mean.

Q. You were active in it right from the start, weren't you?

A. Yes.

Q. And did you get some cards signed up by the other members?

A. Yes, I get the cards from inside, too. Two fellows was come; he said, "Steve, if you want to go work on the H. J. Heinz Company you sign those cards."

Q. I asked you if you got union cards to sign up. Did you get people to sign union cards?

A. I got outside but not inside.

Q. Were you getting union cards signed up? You were getting people to sign up for the union, weren't you?

A. Well, comes right in the house.

Q. I didn't ask you that. Were you around getting people to sign union cards?

A. I don't was around there. Somebody else around, must be, because I was up in the hall. That's where I was signing, over there, on the cards.

Q. Were you talking to people about joining the union?

A. No, I never had nobody can said I said that.

Q. Didn't Mr. Heinrich complain to you you were leaving your elevator and going around the floor talking to people about joining the union?

[fol. 419] A. No, he don't say that.

Q. Isn't that what he talked to you about?

A. Not on the elevator—he was talk to me and the other fellows, there was two together. He knows what I was talking. He said, "Don't go outside union," he said outside union don't give me a job.

Q. Do you say he didn't complain to you about leaving your work at the elevator and talking to other employees about joining the union?

A. No.

Q. Didn't he take that up with you and scold you about it?

A. No.

Q. What was the man's name he was with at the time?

A. His name was Joe.

Q. Joe Donas?

A. I don't know. Do you know—(Addressing spectator in courtroom.) The fellow up there?

Q. Joe Donas, is that the name?

A. No.

Q. His job is mixing mayonnaise, is that right?

A. Yes.

Q. And you were with him when Mr. Heinrich——

A. I no was with him. Mr. Heinrich meet me first and that man brought a truck or something, comes over there by the elevator, and he meet him, too; grabbed him one side and me the other side.

"Boys," he said, "I want to talk to you both." That's why we was come together. I got no time to meet somebody there.

Q. You were not in the elevator then?

A. No.

Q. Where were you then?

A. Up on the fifth floor.

Q. That's not where your job is?

A. Yes, that's my job.

Q. Your job is to run the elevator, isn't it?

A. Yes.

Q. What were you doing on the floor.

A. Because he stopped me on the floor.

Q. How did you come to be out on the floor? How did you come to be out on the floor talking to Donas when Heinrich came along?

A. I come up to the fifth floor, he was up on the fifth [fol. 420] floor talking to John Palivoda. He told me, "Wait a minute," and I was waiting for him, for Mr. Heinrich, and I come down from the fifth floor to fourth floor and he pulled me on the side, there, and he was talking to me; Mr. Heinrich.

Q. Didn't he ask you why you weren't on the elevator?

A. He don't ask me that because he knows I work that job.

Q. Do you say that you had not been leaving your elevator and talking to employees in the plant about the union?

A. No, sir.

Q. You had not been doing that?

A. No, sir, I was keeping on the job all the time and everybody knows that. Nobody can prove me with that.

Mr. Reed: All right.

Redirect examination.

By Mr. Kleeb:

Q. Was it Joe, this mayonnaise mixer you are talking about, was he with you when Heinrich talked to you?

A. No.

Q. Just you and Heinrich?

A. I was just come to Mr. Heinrich from the fifth floor to the fourth floor——

Q. Just a minute. When Mr. Heinrich talked to you about unions, that you have testified to, was Joe there?

A. Yes, Joe was listening the same as me; both.

Q. Joe was there when Heinrich was talking to the two of you about unions?

A. Yes, he was talking first to me; nobody else there; and when he was coming, Joe coming, he brought trucks, I don't — what he got, and Mr. Heinrich stopped him too. He said, "Joe, wait a minute. I want to speak to you fellows."

Q. And talked to both of you?

A. Yes.

Recross-examination.

By Mr. Reed:

Q. Didn't Mr. Heinrich say to you that you could belong to any union you wanted to?

A. He don't say what union we belong, he just said, "Don't go outside union."

[fol. 421] Q. Didn't he say to you you could belong to any union you wanted to?

A. No.

Q. He didn't say that?

A. No.

Q. That you couldn't go on the floor and get members?

A. No, he didn't say that either.

Q. He didn't say that?

A. No.

Mr. Reed: That's all.

(Witness excused.)

Mr. Kleeb: Agnes Gajewski.

AGNES GAJEWSKI, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Agnes Gajewski?
A. Yes.

Trial Examiner Walsh: Let's have the spelling of that name.

Mr. Kleeb: G-a-j-e-w-s-k-i. Off the record, the witness is slightly hard of hearing.

Q. Where do you live?
A. 149 Home Street; that's out in Lawrenceville.
Q. Lawrenceville, Pittsburgh, Pennsylvania?
A. Yes.
Q. Speak loudly to my questions so the Trial Examiner can hear you and they can hear you way over there. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. I don't understand you.
Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. Yes, sir.
Q. How long have you been employed there?
A. It will be 10 years in March.
Q. What department are you in?
A. Preserve department.
Q. Who is your foreman?
A. Albert Marzolf.
Q. Who is your forelady?
A. Theresa Schirer.
Q. Is the preserve department one whole department or [fol. 422] are there divisions?
A. No, that is in divisions. It is in three divisions.
Q. What are those three divisions?
A. Labeling, filling, and kitchen.
Q. And what department are you in?
A. Labeling and wrapping.
Q. And this Theresa Schirer is the forelady of that division?

A. She is only forelady of the labeling and wrapping division.

Q. That is your division?

A. Yes.

Q. Is Marzolf foreman of the entire preserve department?

A. Yes, exactly.

Q. About how many employees are there in the wrapping and labeling department?

A. 22 employees.

Q. Are they all girls or all boys, or mixed?

A. They are all girls in that department that I am in.

Q. Will you state whether or not you were ever approached by any foreman or forelady regarding the Heinz Employees Association? Yes or No.

A. Yes.

Q. Do you recall when you were so approached?

A. April 30th.

Q. Of this year?

A. Yes, Sir.

Q. State who approached you.

A. Albert Marzolf.

Q. During working hours?

A. Yes, sir, 20 to 2.

Q. Will you state what he did and what he said?

A. Well, he come up to me with a piece of paper. There was two names on there. He wanted me to sign that.

Q. Before going further, I hand you Board's exhibit 7. Will you look at it and state if that is the kind of a paper that Albert Marzolf handed you?

A. Well, it was on that sheet. There was lines like that, but it didn't have so much written. I only remember, "I hereby apply myself to Heinz Employees Association."

Q. And you did observe signatures on the paper?

[fol. 423] A. One or two signatures on there.

Q. State as best you can recollect what Marzolf said.

A. Well, he come up to me and he asked me to sign that paper. I says, "No." Then he went to each and every girl. I seen him. He come back to me, and he says maybe I have changed my mind.

I says, "No."

He says, "Well," he says, "you are here long enough; you should know better than that. If the outside union, that is, A. F. of L., wins," I "won't possibly have a job."

Q. Well, did you sign that second time?

A. No, I didn't.
Q. Was that the same day?
A. The same day.
Q. Did anything unusual happen after that?
A. The forelady come up to me about two minutes after.
Q. Is that Theresa Schirer?
A. Theresa Schirer.
Q. And what time was it when she approached you?
A. Well, it was 20 to 2. He came up to me 20 to 2, and it was 20 after she come up.
Q. Did the forelady talk to you?
A. Yes.
Q. What did she say?
A. She was nice about it. She says, in a nice way, but she says not to let the company down, to be with them 100 percent, to sign my name on there. She had me crying. She got me all worked up.
Q. And did you sign it that time?
A. No, I didn't. She walked away.
Q. When did you sign, or did you ever sign, rather?
A. I signed that same day.
Q. The same day?
A. My girl friend handed me the paper.
Q. And why did you sign?
A. Well, I was afraid I was going to lose my job, after the foreman says if the outside wins I wouldn't possibly have a job, and the forelady says—Well, I was scared; that is why I signed it. Anybody would have signed it if they would have told them that.
Q. Did you observe the foreman, Marzolf, going among other girls with this paper?
[fol. 424] A. He went to each and every one.
Q. At the time you first saw the paper did you observe how many signatures were on it?
A. There was two signatures on there.
Q. When you signed were there more than two signatures on it?
A. Everyone. I was almost the last one, all but a few more yet.
Q. After you signed that day, were you ever approached again by anybody about the association?
A. Never.
Q. Did you ever pay any dues into the association?
A. Never.

Q. Were you ever asked to pay any dues?

A. Never. Nobody asked me.

Q. Since the settlement of the strike at the plant, has anybody ever approached you about the association?

A. Nobody. Nobody ever bothered me.

Q. Did you ever attend any of the meetings of the association?

A. Not one, never.

Q. Did you ever receive a membership card from the association?

A. Never.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. You were active in the union from the beginning, weren't you?

A. I can't hear you. You will have to come up here.

Q. Weren't you active in the union from the beginning? From the beginning of the union activity, weren't you interested in it, from the start?

A. What do you mean?

Trial Examiner Walsh: I guess you will have to get quite close.

The Witness: I can't hear you. You will have to speak louder.

By Mr. Reed:

Q. Weren't you interested in the union from the beginning of the union over there?

Do you remember when the union started over in Heinz?

A. Yes.

Q. Weren't you interested in it from the start?

[fol. 425] A. I don't understand what you mean by that.

Q. Well, when did you first get interested in the union?

A. You mean the outside union?

Q. Yes.

A. Well, I signed the same day that they made me sign for the inside.

Q. You signed both of them the same day?

A. Yes, the same day.

Q. You are a steward in the union now, are you?
A. Yes.
Q. Now, this conversation that occurred at two minutes to two on April 30th, how do you fix that in your mind? How do you remember it was 20 minutes to 2 on the 30th?
A. I looked at the time.
Q. Why did you look at the time?
A. I wanted to know what time it was.
Q. Well, do you remember the time and the date that everything happened about that time?
A. I do.
Q. What time did you sign the union card?
A. In the evening after work.
Q. What time?
A. Seven o'clock.
Q. You remember that time, too?
A. Yes.
Q. What time did the forelady talk to you?
A. Two o'clock.
Q. Did you mark it down anywhere?
A. No, I didn't mark it down.
Q. Did you mark down 20 minutes to 2 on April 30th?
A. Well, I don't have to mark it. I have a good memory.
Q. Well, is that the only time anybody talked to you, Marzolf or the forelady?
A. What did you say?
Q. Is that the only time they talked to you about the union?
A. That was the only time, that one day.
Q. And you knew that there was a lot of union talk going around the plant?
A. Yes, I knew.
Q. Did you mark that down or remember the time that anybody else talked to you, any of the other girls?
[fol. 426] A. Oh, I didn't see why I should.
Q. Why should you remember this? Why did you remember this?
A. Yes?
Q. Why did you remember this?
A. Why did I remember it?
Q. Yes.
A. Because I was there to work and not for any foreman to come up to me and talk to me. They didn't come up and

talk to me no other time, why should he bother me talking union to me during working hours? I was there to work, not talk union.

Q. And that is why you remembered?

A. That is why I remembered it.

Q. That is why you remember the time?

A. When he threatened me with the job, that is why I was all worked up, I couldn't work.

Q. That is why you wept?

A. That is why I wept.

Q. You have had a lot of trouble over there before, haven't you?

A. What other trouble?

Q. You have been known as a trouble-maker in that department; haven't you?

Mr. Kleeb: I object.

A. No, I wasn't.

Mr. Kleeb: I object to the line of questioning as immaterial. After all, there is nothing in the direct examination, and there is no issue in here about her being in trouble in the plant.

Mr. Reed: The interest of the witness is always material.

Trial Examiner Walsh: Objection overruled.

By Mr. Reed:

Q. Have you had trouble there before?

A. No.

Q. Never had any trouble with Mr. Heinrich?

A. No. What trouble?

Q. Or Mr. Marzolf?

A. Mr. Marzolf?

Q. Yes.

A. That was after the strike, I had him down in Heinrich's office.

Q. And any other time before the strike?

A. Never.

Mr. Reed: That is all.

[fol. 427] Mr. Kleeb: That is all.

(Witness excused.)

Mr. Kleeb: Marie Muskardin.

MARIE MUSKARDIN, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Marie Muskardin?
A. I am.
Q. You live at 1007 Vineal Street, North Side, Pittsburgh, Pennsylvania?
A. Right.
Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. I am.
Q. How long have you been employed there, approximately?
A. About four years, but I was laid off for three months. I worked there 11 months, then I was laid off for three months.
Q. I mean this last period.
A. Oh, the last period, about three years.
Q. And in what department do you work?
A. Preserve department.
Q. Who is foreman of that department?
A. Albert Marzolf.
Q. What division of the preserve department do you work in?
A. Filling.
Q. What kind of work is that?
A. Well, they fill the pudding in cans, and I run the double seamer that puts the lids on these cans.
Q. After the cans are filled, do you——
A. Yes, sir.
Q. You see that they are capped?
A. Right.
Q. Do you know Lillian Thompson, in your department?
A. I do.
Q. What does she do?
A. She was the timekeeper at that time.
[fol. 428] Q. Prior to the strike?
A. Prior to the strike. The day of the strike she got a job in the factory office.

Q. And do you know where she is now?
A. Factory office.
Q. On what floor do you do your work?
A. Fourth.
Q. And prior to the strike on what floor did Lillian Thompson work?
A. Fifth floor.
Q. Fifth floor?
A. Right.
Q. That is in what building?
A. In the preserve building.
Q. Is it or was it then customary for Lillian Thompson, the timekeeper, who was on the fifth floor, to spend much time on your floor?
A. No, it wasn't.
Q. Where on the fifth floor did she work, if you know?
A. It was up on the labelling and wrapping department. She had her desk up there.
Q. And when, if you know, would it be necessary for her in performing her duties as timekeeper to come on your floor, the fourth floor?
A. The only time would be to collect the filling girls' time cards; that is, we leave our cards down on the fourth floor and she comes and collects them. That would be the only time, or else if there would be a phone call for Albert Marzolf.
Q. So that would be about how many times a day?
A. Well, two or three times, I suppose.
Q. Would she have to stay long to do that work?
A. No, she wouldn't have to stay long to collect the time cards.
Q. Will you state whether or not you were ever approached by anyone during working hours?
A. I was first approached——
Q. Excuse me a minute.
A. Yes, I was.
Q. Was it in reference to the Heinz Employees Association?
A. It was.
Q. Will you state who approached you?
A. Lillian Thompson.
Q. That is this timekeeper?
[fol. 429] A. Right.

Q. And can you state when, with reference to the strike that this occurred?

A. It was about four weeks before the strike.

Q. And at the time were you on hourly work or on piece work?

A. Hourly work.

Q. Are you on piece work now?

A. I never do work on piece work.

Q. Will you state what happened when Lillian Thompson approached you?

A. Well, she approached me, that was four weeks before the strike, was on a Friday morning. She approached me about 10 o'clock that morning, and she had a paper in her hand and asked me if I cared to sign.

Q. Sign the paper she had?

A. Sign the paper.

Q. I hand you Board's Exhibit 7. Will you look at it and read it and state if that is like or similar to the kind of paper Lillian Thompson had?

A. That is right.

Q. It was like that?

A. It was like that.

Q. Did she approach you in full view of the forelady or foreman?

A. The foreman was on the floor on the opposite side of where I worked talking to the girls on the filling line.

Q. Was there anything that you observed to prevent him from seeing Lillian Thompson?

A. He couldn't help seeing because he can see when he is on that side. He can see over onto the side where I work.

Q. Now tell us what Lillian Thompson said to you about the paper and what you said.

A. She said, "Marie, do you care to sign this?" And I said, "Well, let me read it." She said, "It is up to you." So I read it and there was a few signatures on there, but I said, "Now, Lillian, I don't care to sign it."

Q. She walked away?

A. She walked away.

Q. Do you know Marian Saunders?

A. Marian Saunders, yes, I do know her.

Q. Who is she?

A. She was a wrapper on pudding [illegible]n, but is now a time-keeper.

[fol. 430] Q. That is, prior to the strike she was a wrapper?

A. She was a wrapper.

Q. And now she is a timekeeper?

A. Timekeeper.

Q. A timekeeper where now?

A. Preserve department.

Q. Do you know how long she has been a timekeeper?

A. 24th of May.

Q. That was the day of the strike?

A. Right.

Q. A wrapper on that floor before the strike?

A. Fifth floor.

Q. That is the same floor Lillian Thompson worked on prior to the strike; is that right?

A. That is right.

Q. As a wrapper on the fifth floor, would she have any business on the fourth floor during working hours?

A. Well, at the time she approached me she should be wrapping.

Q. Did she approach you?

A. She did approach me.

Q. When?

A. That was a week later after Lillian Thompson approached me.

Q. And at that time Marian Saunders was a wrapper?

A. A wrapper on pudding.

Q. And what time of the day was it she approached you?

A. Well, I went to the wash room at 3:30 that time, and I come back at 20 minutes to 4:00, and Marian Saunders was standing there with a paper in her hand.

Q. What kind of a paper?

A. For the Heinz Employees Association.

Q. The kind of paper I showed you before?

A. Right.

Q. And why do you say at that time she should have been wrapping, Marian Saunders?

A. I don't know why she should have left her job, she should have been up there. I am not allowed to leave my job and go up on the fifth floor and talk to anybody.

Q. Where did she approach you and talk to you?

A. She approached me at my job where I was running a double seamer.

[fol. 431] Q. On the fourth floor?

A. On the fourth floor.

Q. In full view of the foreman?

A. In full view of the foreman. He is on the other side talking to the filling girls.

Q. Tell us what Marian Saunders said and what you said.

A. She asked me to sign, and I said, "Listen, Marian, don't come down here and bother me during working hours. I don't go up and bother you." I said, "I don't know what I am signing for, I don't know what I am going to get, or I don't understand anything about it."

Q. What did she do?

A. She says, "Oh, the trouble with you is nobody can talk to you." I said, "Well, what do you mean?" "Well," she said, "nobody can just talk to you." That is all she said. She wouldn't explain herself.

Q. And she walked away?

A. She walked away.

Q. Did you look at the paper at that time?

A. I did read it then again.

Q. And were there any signatures on the paper?

A. There was a few.

Q. Did anything happen after she left, on the same day?

A. Well, about two minutes after she left Albert Marzolf, the foreman, came to me and asked me why I jumped on Marian the way I did. I said, "Well, Al, I am not allowed to go up and talk to Marian or bother her during working hours. I don't want her to come down here and bother me either."

Q. Was anything said by Marzolf at that time about unions?

A. Well, he said, "You will find yourself out in the street next week with Frank Novak."

Q. Who is Frank Novak?

A. Frank Novak is now the president of the local 325, A. F. of L.

Q. Did you ever sign this paper that we have referred to previously?

A. I did. When Marian Saunders approached me after working hours, I had to take my lost-time sheet up to the desk, which is on the fifth floor, and on the desk this petition for the association was laying there with a pencil beside it. [fol. 432] Lillian was closing her desk up, getting ready to go home.

Q. Lillian who?

A. Lillian Thompson.

Q. It was her desk, you are talking about?

A. It was her desk, then the timekeeper's desk.

Q. State what happened.

A. Well, the paper was laying there, and I was so worked up with what Al told me that I would be out in the street—I suppose he was referring to this association, if I wouldn't sign it I would be out in the street.

Q. That is what you thought?

A. That is what came to my mind right away.

Q. And what did you do up to the desk?

A. So I took my lost-time sheet up there, and I had put it in the corner of the blotter, and aside of the paper laying there with all the names on and, of course, I was the last one to sign; everybody else signed. I thought—I said, "I will sign it, but I am not for it." So I signed my name and I left.

Q. Did Lillian Thompson do anything or say anything in response to that?

A. She didn't say anything.

Q. Did she do anything?

A. No, not at all.

Q. Do you recall the election conducted by the Labor Board, June 8th of this year?

A. I do.

Q. Since that election and since the plant has operated, since the strike, have you observed any difference in the working conditions in your department than existed prior to that election?

A. Well, I was treated the same as before.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. This Lillian Thompson is an hourly worker the same as you are, isn't she?

A. She is.

Q. And this Marian Saunders is a pieceworker in the wrapping department?

A. She was at that time.

Q. Yes. So that when she came down from the wrapping department she was losing wages when she talked to you, and you weren't, were you?

A. Well, that was on the company's time, wasn't it?

Q. Well, was it the company you were worried about for [fol. 433] fear they would lose money?

A. I wasn't worried about anybody in particular.

Q. Have you had any trouble with this Marian Saunders before?

A. Never before. We were on friendly terms.

Q. You were pretty loud in your talk that day, weren't you?

A. Well, she got me so mad because I couldn't bother nobody during working hours; why should she bother me?

Q. Well, you had quite——

A. And I knew that we weren't allowed to talk union during working hours, so I didn't want her to bother me about the union, and I didn't bother with anybody else about it.

Q. Well, now, you know you weren't allowed to talk union during working hours.

A. I heard it going around through different people.

Q. And there was a lot of union talk wasn't there?

A. There was, both for the company and outside.

Q. That is right. And Mr. Marzolf came over and asked you what the row was about between you and Marian; didn't he?

A. He just asked me why I jumped on Marian the way I did when she asked me to sign this petition.

Q. What time was that?

A. That was two minutes to four, when I come back from the washroom, when Marian was waiting for me.

Q. What day?

A. Friday, May 7th.

Q. Friday, May 7th?

A. Right.

Q. And this other thing was at 10 o'clock in the morning, May 7th, was it?

A. No, that was April 30th, when Marian—when Lillian Thompson came to see me first.

Q. That was at 10 o'clock on April 30th?

A. That was on a Friday, too.

Q. On Friday. Why do you remember those exact times?

A. Well, I remember that pretty well.

Q. Well, why was there anything to fasten it in your mind?

A. Well, I just—I don't know what made me remember [fol. 434] it. I just thought maybe I had better, but after

that, after Albert Marzolf talked to me that way, that I will be put out in the street, I signed up with the union. And I got talking with one of the fellows, and he asked me if anybody ever did talk to me about the association, and I told him. Well, then, he says, to bear that in mind. Well I did.

Q. You are vice president of the union now?

A. I am.

Q. And you were interested in the union at that time, weren't you?

A. Well, not at that time, when they came with the petition for the association. I didn't care to bother about any, but after they started to come and bother me on working time, and that, why, I signed up with the outside.

Q. You hadn't attended any of their meetings?

A. No, I didn't.

Q. The association meetings?

A. No.

Q. You heard Marzolf say frequently to the girls that they had to stop talking union during working hours, didn't you?

A. What do you mean?

Q. Didn't you hear him say frequently to the various girls that they had to stop talking union during working hours?

A. I never heard him say that.

Q. Where did you get your opinion, then, that you couldn't talk union during working hours?

A. Well, at lunch, and I heard other people say you are not allowed to talk union during working hours, and I read the newspapers.

Q. Well, what did the newspapers say?

A. The newspapers say plenty about union.

Q. Well, did they say anything about talking union during working hours?

A. When anybody has a case, or that, they bring that up, don't they, about talking union on working hours? I am there to work and nothing else; I know that much. I pay attention to my job and nothing else.

Q. Was there anything at that time in the paper about the Heinz situation?

A. No, nothing about the Heinz situation that I can remember.

Q. Any other labor matter that brought that to your attention.

[fol. 435] A. Well, there have been quite a few labor matters brought up in the paper at that time.

Q. How long have you worked over there?

A. Three years of steady employment now.

Q. Have you had any difficulties?

A. No, not at all.

Mr. Reed: That is all.

(Witness excused.)

Mr. Kleeb: Edith Sherbon.

EDITH SHERBON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. What is your name?

A. Edith Sherbon.

Q. Miss Sherbon, take your time and speak out loud in answering the questions so that we all can hear it, will you please?

A. Yes.

Q. Where do you live?

A. 101 Jacksonia Street.

Q. That's North Side, Pittsburgh?

A. Yes.

Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?

A. I am.

Q. Approximately how long have you been employed there?

A. It was four years, July 28th.

Q. Of this year?

A. Of this year.

Q. In what department do you work?

A. In the cereal.

Q. What is the nature of your work?
A. Inspector.
Q. About how many girls are in the cereal department?
A. I would say there are about 15 girls.
Q. And who is in charge of that department?
A. Clara Gazzo.
[fol. 436] Q. What's the first name?
A. Clara.
Q. Is she a forelady?
A. She is a forelady.
Q. And is she your immediate boss, I mean, she is your boss?
A. Well, she has charge over us girls, but there is a foreman over her.
Q. Who is that?
A. Bill Rickwalsky.
Q. How do you spell that?
A. R-i-c-k-w-a-l-s-k-y, I think, I am not sure.
Q. He is foreman of the department?
A. He is foreman over the cereal department.
Q. And Clara Gazzo is forelady of the cereal department?
A. No, she is forelady of the fifth floor only.
Q. There are more than one foreladies?
A. It's divided into two departments, the third floor and fifth.
Q. The third floor and fifth floor?
A. Yes.
Q. And you are on what floor?
A. The fifth.
Q. And it's over that floor, that group, that Clara Gazzo is forelady?
A. Yes.
Q. Do you know who is forelady of the fifth floor?
A. Catherine Vogel.
Q. When did you, for the first time, hear Anything about the Heinz Employees Association?
A. The first time I ever heard anything about the Heinz Employees Association was one afternoon when the timekeeper, Josephine Malik, took my place with the washroom, and when I came back she still had my place and she handed me a paper and a pencil and she said to me would I care to sign the Heinz Employees Association, so I looked at this paper, although I don't remember what was written on it,

it was a typewritten sheet, and I believe there was two or three names at the bottom——

Q. I hand you Board's Exhibit 7 and ask you to look at it and read it and state if that's the kind of paper or if that is a similar paper to the one Josephine Malik handed you?

[fol. 437] A. Yes, I would not say it was this paper, but it's similar to it.

Q. I asked you if it was similar.

A. Yes.

Q. And the wording on this paper is like the wording on the paper she gave you?

A. Yes.

Q. And did you observe any signatures on the paper when you saw it?

A. There were two or three signatures at the bottom.

Q. Will you please relate what your conversation was with her?

A. When she asked me to sign this Heinz Employees Association I said to her, "Who is the head of it?" And she didn't answer that question, and then I said to her, "And what does it promise us?" Still she didn't answer. So I said to her, "Well, I will think it over," and I gave her back the paper and pencil and the paper was unsigned.

Q. By you?

A. It was without my name.

Q. Are you able to fix as to time about when this occurred?

A. I would say it was about the second week in May and it was the first part of the week, I would say.

Q. Following that occurrence, did anything unusual occur in your department with reference to this association?

A. Yes.

Q. Will you state what happened and when?

A. It was on a Friday afternoon, in the time booth, between 1:00 and 1:30. We girls were all called together, according to our grapevine system; one told the other one that we were to go in the cut wheat room. It was a small room off our main workroom. So when we were all assembled in this room the forelady said she was surprised at the attitude we were taking towards the Heinz Employees Association. She wanted to know why we didn't sign it.

Q. Is that Clara Gazzo?

A. Clara Gazzo.

Q. Go on; tell us all that occurred.

A. She said that Heinzes had always treated us right during the depression, they always had given us work and she said if we joined an outside union we would have to [fol. 438] pay $3 a month dues where if we joined the Heinz Employees Association we would pay 50 cents a month.

Q. Did anything else occur?

A. She got a girl by the name of Violet Schneider up there and she said to her, "You get up and tell these girls about unions. You seem to know more about this than the rest of them."

Q. Who said this, this Violet Schneider?

A. Clara Gazzo.

Q. Did she get up and speak?

A. She did, and she spoke for the inside and against the outside.

Q. And can you recollect anything she said at that time?

A. No, I just can't recall anything she said. She said the Heinzes had always treated her right while she worked there, although I can't recall everything she said.

Q. About how long did this meeting in the cut wheat room last?

A. I would say about 20 minutes.

Q. Which girls were assembled in this meeting?

A. All of us girls were in there. The Heinz Employees Association, girls that had signed with that and the outside.

Q. What I mean, was it the entire cereal department, or just one of the two floors?

A. Just the girls that worked on the fifth floor.

Q. So as to clear the record: When you testified previously there were 15 girls in your department——

A. I said approximately.

Q. —did you mean in your entire cereal department, or on your floor?

A. On our floor.

Q. Do you know approximately how many are on the other floor?

A. Oh, I would say about seven or eight.

Q. Did you ever sign this petition, Miss Sherbon?

A. Yes, I did.

Q. That this Malik girl showed you?

A. Yes, I did.

Q. Will you state when you signed and the circumstances surrounding your signing of this paper?

A. Well, after the forelady got through giving us this talk why, naturally, we girls were discussing it among our- [fol. 439] selves, so there was eight of us altogether at that time, that hadn't signed it, and they wanted to sign it. They were afraid they were going to lose their jobs. I said, "Well, there is eight of us, we can surely stick it out."

Q. Can you name the eight?

A. There was Antoinette Kopelic, Martha Samuel, Sophie Bronowiecz, Armeda Ferrari, and Mary Hrovat, myself, Helen Lipp, and a girl by the name of Angela Bruzuska.

Q. How do you spell that last name?

A. B-r-u-z-u-s-k-a, although I couldn't say for sure.

Q. Go on.

—. "I said, "There are eight of us, and we could surely stick it out. But they were worried, and each of them signed it so I didn't want to be the lone wolf, I signed it too.

Q. Where were you when you signed it?

A. At the timekeeper's desk.

Q. How did you happen to be there?

A. It was shortly before 5, I would say about 3 minutes to 5:00, and we went over there for our time card and this sheet of paper, plain sheet of paper was lying on the desk all afternoon for the girls to sign their names to it.

Q. Did you just voluntarily walk up and sign the paper at the time? I mean, did you just voluntarily, of your own free will, sign this paper?

A. No, I didn't want to sign.

Q. Why did you sign?

A. Because all of the rest of them signed and I was afraid of losing my job if I didn't sign it.

Q. Is that why you signed?

A. That's why I signed.

Q. Why were you afraid you would lose your job and why did you think you would lose your job?

A. Well, I know they don't care much for the union down there. I will tell you something that happened before. Before we ever had any talk going around the plant. You know, I heard there was going to be a meeting of the A. F. of L. and I happened to mention it to one of the girls down there I would like to go. I said to her, "Wouldn't you like

to go too?" I said, "How about three or four of us going up to the meeting and seeing what it's like?" So a little bit later on I heard a certain girl say that the forelady had come to her——

[fol. 440] Q. No, I don't want that testimony.

A. You don't want to know that?

Q. No, I don't want that. Following the strike at the Pittsburgh Plant, do you recall the strike?

A. Yes.

Q. And you returned to work, did anything unusual happen with reference to the union at the plant with any boss or official, after you went back to work?

A. Well, I remember something that happened on July the 13th.

Q. Will you tell us what that was, please?

A. That was on a Tuesday and the time was between 4:25 and 4:30. My forelady approached me and she said, "Mr. Heinrich wanted to see you at the desk." So I walked over to the desk and Mr. Heinrich asked me to sit down, which I did, and he said to me, "Edith," he said, "you have turned in a complaint. Why didn't you come to your forelady or foreman with it?" And I said to him, "Well, the unions told us if we had any complaint to make we should come up to the office and file them and the Grievance Committee would take them up with the company."

Q. Took them to what office?

A. Office of the A. F. of L. and file the complaint at the office and the Grievance Committee would take the complaint up with the company.

Q. Had you filed a complaint with the union?

A. I had.

Q. And what did Mr. Heinrich say to you about the filing of the complaint?

A. He said I should have come to my forelady or foreman about it instead of going to the union.

Q. Continue and relate the conversation between you and Mr. Heinrich.

A. Should I tell what the complaint——

Q. Relate the conversation and what was said, whatever was said.

A. He said "Why did you join the A. F. of L.?"

And I said, "This is a free country and you can do as you please."

He said, "You were pretty proud to walk in that picket line, weren't you?

I said, "If you are a Catholic, you don't try to hide it; if you belong to the Masons' lodge, the Knights of Columbus lodge, you don't try to hide it; and," I said, "I belong [fol. 441] to the union and why should I try to hide it?"

Q. And what did he say?

A. And he said, to me,——

Q. There is nothing to get excited about, and nervous. Take your time. All we want to know is what was said by you or by him.

A. He said to me that the Heinz Company had always given us a square deal, and I said to him, "Well,"—No, that isn't what I said.

Q. Were you on the picket line?

Mr. Reed: Let her say what she said.

Mr. Kleeb: What did she say?

Mr. Reed: She said that isn't what she said. I want to know what it is.

By Mr. Kleeb:

Q. Why did you shake your head?

A. Because I was going to say something that wasn't true.

Q. Why were you going to do that?

A. It just came out. That's why I corrected myself.

Q. But you haven't said anything that isn't true, have you?

A. No, I have not. I can swear to everything that I have said.

Q. Have you given one word of testimony up to this time——

Mr. Reed: Don't lead your witness. The remark stands for what it is.

By Mr. Kleeb:

Q. Have you given one word in this record that wasn't true?

Mr. Reed: It is objected to as cross examining his own witness.

A. I have not.

Trial Examiner Walsh: Objection sustained.

A. I have not.

Trail Examiner Walsh: You needn't answer that.
Mr. Kleeb: Cross examine.
Mr. Reed: No cross examination.
Trial Examiner Walsh: Excuse me, Miss Sherbon.

By Trial Examiner Walsh.

Q. I want to know when the conversation you were last talking about, the conversation with Mr. Heinrich, was held. Was this after the strike?
A. This was after the strike, yes, sir.

[fol. 442] Trial Examiner Walsh: All right. Thank you.

(Witness excused.)

Mr. Kleeb: If the Trial Examiner please, may I have a five-minute recess?
Trial Examiner Walsh: Yes; five-minute recess.

(Thereupon a short recess was had.)

Trial Examiner Walsh: The hearings will please come to order.
Mr. Kleeb: Armeda Ferrari.

ARMEDA FERRARI, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination:

By Mr. Kleeb:

Q. You are Armeda Ferrari?
A. Yes, sir.
Q. Will you speak out loud so everybody may hear, please?

Trial Examiner Walsh: The name I did not get.
Mr. Kleeb: F-e-r-r-a-r-i, Armeda.

By Mr. Kleeb:

Q. You live at 1101 Jacksonia Street, North Side, Pittsburgh, Pennsylvania.

A. Yes.

Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?

A. Yes.

Q. How long have you been employed there?

A. It was four years on the 28 of July.

Q. Do you know Edith Sherbon, who has just testified?

A. Yes.

Q. Are you in her department?

A. Yes.

Q. Were you present in the courtroom when she testified about the meeting in the cut-wheat room in the early part of May of this year?

A. Yes, I was.

[fol. 443] Q. Were you present at that meeting?

A. Yes, I was.

Q. Is what Miss Sherbon stated took place at that meeting substantially true and correct as you recollect the meeting?

A. Yes, sir.

Q. Miss Sherbon testified that you, or that Armeda Ferrari, was one of the eight girls who held back from signing the petition. Are you that Armeda Ferrari?

A. Yes.

Q. Did you sign the petition?

A. Well, yes, we did sign it, about five minutes to five.

Q. And where were you when you signed it?

A. We were all working, and then, just about five minutes to five, we thought, "We will sign it", so we went over, one by one, and signed it.

Q. Who do you mean by "We went over, one by one"?

A. All of us girls, eight of us.

Q. Where was the petition when you signed it?

A. On the desk.

Q. Was anyone present when you signed it?

A. I don't remember. There was some of our girls.

Q. Why did you sign the petition?

A. —Well, I don't know. I thought—maybe I was afraid to lose my job, so I signed it.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. There were about 15 girls in this meeting that the forelady had, were there?

A. I don't understand.

Q. How many girls were there in this meeting that this forelady had?

A. About 15 of us.

Q. And what's her name? Gazzo?

A. Clara Gazzo. She works——

Q. She works under the foreman, does she?

A. Yes.

Q. And he has a great many more people under him than she has?

A. I suppose, I guess, yes.

Q. How long had this forelady been in that department? [fol. 444] A. I couldn't tell you.

Q. How long had you known her?

A. For four years.

Q. Since you have been there?

A. Yes.

Q. And you didn't want to sign this petition but you thought you had better, is that it?

A. Yes.

Q. When it came to the election you could vote as you pleased, couldn't you?

A. Yes.

Q. It didn't affect that at all?

A. No.

Mr. Reed: That's all.

Mr. Kleeb: That's all.

(Witness excused.)

Mr. Kleeb: Antoinette Kopelic.

ANTOINETTE KOPELIC, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. Will you speak out loud, please?
A. I will.
Q. You are Antoinette Kopelic?
A. Yes.
Q. You live at 1115 Progress Street, North Side, Pittsburgh, Pennsylvania?
A. Yes, sir.
Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. Yes.
Q. About how long have you been employed there?
A. About seven years.
Q. Do you know Edith Sherbon?
A. Yes, I do.
Q. The girl who testified here previously?
A. Yes.
Q. Are you in the same department of the cereal department that she is?
A. Yes, sir.
Q. Did you hear her testimony about the meeting of the girls in the cut-wheat room in the early part of May of this year?
[fol. 445] A. Yes, sir.
Q. Were you present at that meeting?
A. Yes, I was.
Q. Is the testimony that she gave about what took place at that meeting substantially true and correct, as you recollect it?
A. It was.
Q. Did you sign the petition for the Heinz Employees Association?
A. Yes, I did.
Q. This is Board's exhibit 7 (handing to witness). Will you look at it? Is that the kind of a petition that you signed?
A. Something like it?
Q. You read it?
A. I didn't; I just signed it.
Q. You didn't even read it?
A. I didn't even read it, no.

Q. Were you told what it was about?
A. No.
Q. When did you sign it?
A. I signed it the day she was coming around. It was like—after the strike.
Q. After the strike?
A. After the strike.
Q. You didn't sign it—this paper or any paper like this at all—before the strike?
A. No, I didn't.
Q. Who came around to get you to sign it?
A. The timekeeper.
Q. Who?
A. Josephine Malik.
Q. Was that after the election was held?
A. I suppose it was.
Q. Well, the election was held June of this year?
A. Was the strike in May?
Q. The strike was in May, May 24th.
A. Yes.
Q. Was it, then, before that or after that that you signed the petition?
A. It was after the strike.
Q. Where were you when you signed it?
A. At my work.
Q. And where, I mean, at your work?
A. No, that was at the desk when I signed the paper.
[fol. 446] Q. At the desk. Whose desk?
A. The timekeeper's desk.
Q. Was anybody around when you signed it?
A. No, just the timekeeper.
Q. Did she say anything?
A. Yes.
Q. Why did you sign the paper?
A. Well, I thought the other girls did and I did.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. You are mistaken about when you signed this, aren't you? You signed it when the other girls signed it, didn't you, before the election?
A. That's right. I don't remember exactly if it was before or after the strike.

Q. I don't want to confuse you at all, but you signed it when the rest of the girls did, didn't you?

A. Right after the rest of the girls came up.

Q. Was it the same day the other girls signed it?

A. The same day. They signed at the end of the day, when they were going home, but I signed in the morning.

Q. The same day?

A. Yes.

Q. So, if they are right in saying that was before the strike, that's when you signed it, too, isn't it?

A. Then I don't remember that.

Q. Were you at this meeting that this forelady had?

A. Yes, I was in it.

Q. And there were some girls there that were in favor of this association and some that were in favor of the union, weren't there?

A. Yes, they were all together.

Q. And she didn't tell them that they had to sign any paper or anything of that kind, did she?

A. She didn't have anything in her hand when we were at that meeting?

Q. And you just decided, afterwards, you had all better sign?

A. Yes.

[fol. 447] Q. She didn't tell you you were going to lose your job?

A. No, she didn't say anything like that.

Q. She was in the habit of getting the girls in and talking to them at various time, about different things?

A. Yes.

Q. Your work and everything else; that's the usual thing to do?

A. Yes.

Q. And when you had a chance to vote you could vote as you pleased; that didn't affect your vote?

A. No, she didn't say anything.

Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. Were you one of the eight girls that Edith Sherbon talked about?

A. Yes.

Q. That were the last to sign?
A. Yes, sir.

Mr. Kleeb: That's all.

(Witness excused.)

HELEN LIPP, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Helen Lipp?
A. Yes, sir.
Q. L-i-p-p?
A. Yes, sir.
Q. You live at 1241 High Street, North Side, Pittsburgh, Pennsylvania.
A. Yes, sir.
Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. I am.
Q. About how long have you been employed there?
A. Four years, July 28th.
Q. Do you know Edith Sherbon, who testified here?
A. Yes.
Q. Are you in her department?
[fol. 448] A. Yes, sir.
Q. Were you present when she testified?
A. Yes, sir.
Q. You heard her testimony?
A. Yes, sir.
Q. She testified about a meeting of the girls of your department in the cut-wheat room in the early part of May of this year. Were you present?
A. Yes, sir.
Q. Is what she testified as to the events at that meeting substantially true and correct? As you remember them?
A. Yes, sir.
Q. I show you Board's exhibit 7, which has been identified as a Heinz Employees Association petition which was

circulated throughout the factory in the various departments. Did you ever see a petition like that?

A. I just saw the sheet of paper, and it had something typewritten on it, but I didn't read it.

Q. Were you asked to sign such a paper, ever?

A. Yes.

Q. By whom?

A. Well, before we were called into this cut-wheat room.

Q. Yes.

A. It was that morning that Josephine Malik had taken my place. That's the timekeeper, Josephine Malik. She had taken my place, and she asked me to look at the paper, and I looked at it and just handed it back to her.

Q. Did you sign it then?

A. No, I didn't.

Q. You did say you attended that meeting. Did you ever sign that petition?

A. I signed it after that meeting. That was about five minutes before five, when we went home.

Q. And where were you when you signed it?

A. I was working upstairs, washing toasters. We usually wash toasters just before we go home, Fridays, and it was soon time to go home, and I saw the paper there, and decided to sign it.

Q. Why did you sign it?

A. I thought everybody else was going to sign it, and I seen everybody had signed it, and I thought I would sign it, too. I didn't want to be the only one out.

Q. Were you one of these eight girls that Edith Sherbon [fol. 449] spoke about as being the last to sign?

A. Yes.

Q. Did you ever sign a membership card in the association?

A. A yellow card, I signed.

Q. I show you Board's exhibit 8 (handing to witness). Is that the kind of a yellow card you signed?

A. Yes.

Q. Did you sign it before or after you signed the petition, like Board's exhibit 7?

A. I beg your pardon. I didn't sign that yellow card.

Q. Were you asked to sign it?

A. I was asked to sign it.

Q. Were you asked to sign it before or after you signed the petition.

A. After I signed the petition.

A. And who asked you to sign a yellow card like Board's exhibit 8?

A. One of the girls from the fifth floor had taken my place, and I went over the desk, and Josephine Malik laid the card in front of me, and I looked at it, and just walked away. I didn't say anything. I just went back and took my place again.

Q. You never did sign the yellow cards?

A. I never signed the yellow card.

Q. How did it occur that someone was taking your place? Were you absent for a while?

A. No. You see, our department runs from eight 'til five, and at noontime it runs, too. We never shut down unless it's necessary to shut down, and somebody always has to take your place, in order to keep the work going.

Q. And who assigns people to take people's places?

A. Well, I suppose that's Clara may have told Josephine to take my place.

Q. Clara who?

A. Clara Gazzo.

Q. The forelady?

A. Yes.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. It's quite the usual thing for the girl that is timekeeper to go around to relieve the girl at the machine?

[fol. 450] A. Yes.

Q. If they go to the toilet or anywhere, this girl takes their place?

A. Yes, sir.

Q. So it wasn't anything unusual about that, there wasn't anything unusual about that, was there?

A. No, sir.

Q. And this timekeeper girl is an hourly employee the same as the others?

A. Yes.

Q. And there wasn't anything unusual in having a meeting in the forelady's room, was there?

A. We had never had a meeting in that room before.

Q. But you would often have meetings with her; she called meetings frequently?

A. Maybe at the timekeeper's desk, but not in the room.

Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. Did you or did you not observe Josephine Malik approaching other girls prior to this cut-wheat room meeting, prior to the signing of this petition?

A. No, I did not.

Mr. Kleeb: That's all.

Recross-examination.

By Mr. Reed:

Q. You are a member of the union now?

A. Yes.

Q. And there hasn't been any trouble since the election?

A. No.

Mr. Reed: That's all.

(Witness excused.)

Mr. Kleeb: Mary Hrovat.

MARY HROVAT, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Mary Hrovat?

[fol. 451] A. Yes.

Q. H-r-o-v-a-t?

A. Yes.

Q. You live at 415 Mt. Troy Road, North Side, Pittsburgh, Pennsylvania?

A. Yes, sir.

Q. Are you now employed at the Pittsburgh Plant of the H. J. Heinz Company?

A. Yes.

Q. Approximately how long have you been employed there?

A. It was four years on the 26th of July.

Q. Do you know Edith Sherbon who testified here?

A. I do.

Q. Who testified a little while previously?

A. I do.

Q. Do you work in her department?

A. I do.

Q. Were you present in the courtroom when she testified?

A. I was.

Q. She testified as to a meeting of your department in the cut-wheat room in the early part of May of this year. Did you hear that testimony?

A. I did.

Q. Were you present at that meeting?

A. I was.

Q. Are the facts of what took place at that meeting as related by Miss Sherbon substantially true and correct, as best you recollect?

A. It is.

Q. Prior to that meeting were you ever approached by anyone about joining the Heinz Employees Association?

A. I was, by the timekeeper, Josephine Malik.

Q. What did she say or what did she ask you to do, if anything?

A. She came to me with a white piece of paper, that white slip of paper.

Q. Referring to the white slip of paper I show you Board's Exhibit 7. Was it a paper like that?

A. Yes, it was something like this. I didn't read it all, though.

Q. Did you know it was about the Heinz Employees Association?

[fol. 452] A. Yes.

Q. How did you know that?

A. Well, I read about it and it has in there about the association.

Q. What did Josephine Malik want you to do?

A. She said, "Read this" and I just glanced at it and I gave it back to her.

Q. Did you sign it?
A. No.
Q. Were you asked to sign it?
A. No, she just handed it to me, that's all.
Q. Was there any signatures when you saw it?
A. I don't remember whether there was or not.
Q. Are you one of the girls that Miss Sherbon talked about that were the last to sign the paper?
A. What is it?
Q. Are you one of the eight girls that Miss Sherbon mentioned in her testimony as being the last girls to sign this petition?
A. Yes.
Q. When did you sign the petition, this paper?
A. This paper?
Q. Yes.
A. The same time as the other eight girls. We all signed at the same time.
Q. Where were you when you signed it?
A. I was just ready to go home, it was just about five minutes before quitting time.
Q. Where was the petition when you saw it?
A. It was on the desk.
Q. Whose desk?
A. The timekeeper's desk.
Q. Is that Josephine Malik's desk?
A. Yes.
Q. Why did you sign the paper?
A. I thought it was best to sign.
Q. Why?
A. I thought everybody else was signing it so I might as well sign it too.
Q. Did you ever sign a membership card for the association?
A. I did.
Q. I show you Board's Exhibit 8. (Handing witness.) And ask you if that's the kind of a membership card you signed?
A. Yes, this is the one.
[fol. 453] Q. It was a card like this one?
A. Same thing.
Q. Was it signed by you before or after you signed the petition?

A. It was after I signed the petition, the white paper, there.

Q. State what occurred? How did you happen to sign the card and for whom did you sign it?

A. Someone took our place, one of the girls, and she told me to go to Josephine Malik. I went over to her and she started telling me about that card, here. She said she thinks it will be best for me to sign it. She says the company was nice to me all these years and she thinks I should stick by it so I didn't sign it the same day she was talking to me, but the next day I signed it.

Q. Who had these yellow cards?

A. The timekeeper.

Q. Josephine Malik?

A. Yes.

Q. At the time that you were approached by Josephine Malik with this paper, the first time, did you observe her approaching any other girls with the paper?

A. I don't think I remember seeing her going to anyone else, but she came to another girl and I because we were working together.

Q. Who was that?

A. Sophie Bronowiecz.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. When this meeting occurred, there were about 15 girls there, were there?

A. Yes.

Q. And some of them were for the union and *and* some of them were for the association, weren't they?

A. That's right.

Q. And this forelady, didn't she—she didn't say you had to sign anything or that you had to join any union or you couldn't join any union or anything of that kind, did she?

A. She didn't say what we had to do, but she said she thinks it best to stick to the company because the outside union charges $3 a month for dues and the company union 50 cents.

[fol. 454] Q. None of the girls thought she was trying to force them to do anything?

A. No, but the way she was talking, we thought it would be best to sign it.

Q. But you decided that among you girls yourselves?

A. We thought it was best at the way she was talking.

Q. None of the eight girls complained to the foreman about this meeting or what this forelady said, or anything of that kind?

A. No, we all kept quiet.

Q. None of you complained to the foreman about it?

A. No.

Q. So far as you know, there was no complaint of any kind. You just made up your mind it was best to sign and you all signed later, is that right?

A. Yes.

Mr. Reed: That's all.

(Witness excused.)

Mr. Kleeb: Martha Samuel.

MARTHA SAMUEL, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Martha Samuel?

A. I am.

Q. You live at 1135——

Trial Examiner Walsh: What's the name? I am sorry.

Mr. Kleeb: Samuel.

Q. You live at 1135 Getman Street, North Side, Pittsburgh, Pennsylvania?

A. Yes.

Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?

A. I am.

Q. And about how long have you been employed there?

A. It was six years on August the 11th.

Q. Do you know Edith Sherbon who testified here some-[fol. 455] time previously today?

A. I do.

Q. You work in the same department that she works in?
A. I do.
Q. Were you present when she testified?
A. I was.
Q. She testified that in the early part of May of this year there was a meeting of the girls in your department in the cut-wheat room. Do you recall that testimony?
A. I do.
Q. Were you personally present at that meeting?
A. I was.
Q. Are the facts as told by Edith Sherbon as to what occurred at that meeting substantially true and correct as best you recollect what occurred?
A. They are.
Q. Prior to that meeting, Miss Samuel, were you ever requested by anyone to sign up for the Heinz Employees Association?
A. Well, I was asked by the timekeeper, Josephine Malik.
Q. State what occurred.
A. Well, she came to me with a slip of paper and she asked me to sign it, but I don't remember whether I signed it right then or if I signed it right after the meeting.
Q. Was it during working hours when you were approached by Josephine Malik?
A. It was during working hours because I was working.
Q. Is this paper, Board's Exhibit 7, like the paper that Josephine Malik showed to you?
A. Yes, it is.
Q. Did you ever sign a membership card for the association?
A. I did.
Q. Was the card you signed like Board's Exhibit 8? (Indicating.)
A. Yes, that is the part I signed.
Q. And who requested that you sign such a card?
A. The timekeeper, Josephine Malik.
Q. Did that occur after you signed the petition for the association?
A. Yes, it was.
[fol. 456] Q. Where were you when you were asked to sign this membership card?
A. Well, once somebody took my place—I can't recall just who it was—and I came over to the desk, and she handed me the card, and she said, "Here, sign this."

Q. And did you sign it then?
A. And I signed it and walked away.
Q. Why did you sign the card?
A. Well, I figured that since we had signed the petition, that we had to sign this yellow card.
Q. Have you ever paid any dues in the association?
A. No.
Q. Have you ever been requested for any dues?
A. I was requested to pay dues.
Q. How many times?
A. Once. It was in the first week of July. I recall we were working night turn and it was just before I had started to work. I believe it was about a quarter to—no, about 1:30, because I think I started a quarter to 2:00 that day and I came up to the department, and I was over by the desk and the timekeeper, Josephine Malik, asked me to pay my dues for the Heinz Employees Association; and I said to her, "Josephine, I am not going to pay you any dues in that because I belong to the other—to the other union." And she says to me, "What do you want to work here for then?"

Mr. Kleeb: Cross examine.
Mr. Reed: No cross examination.
Mr. Kleeb: That is all.

(Witness excused.)

Mr. Kleeb: Aloise Lukitsch.

ALOISE LUKITSCH, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Aloise Lukitsch?
A. Aloise Lukitsch, yes.
Q. You live at 1824 Brahm Street, North Side, Pittsburgh?
A. Yes.
Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. Yes, sir.

[fol. 457] Q. About how long have you been employed in there?

A. 10 years last August.

Trial Examiner Walsh: What is the answer?

(The answer was read as above recorded.

Q. What department?

A. Distillery department.

Q. Distillery department?

A. Distillery, yes.

Q. Who is the foreman?

A. Frank Krup.

Q. K-r-u-p?

A. Yes.

Q. Were you ever approached by anyone during working hours to sign up with the Heinz Employees Association?

A. Yes. First, fellow comes in in the afternoon, Kirschner was his name.

Q. Frank Kirschner.

A. Kirschner, yes. He come to me, says I should sign up for the inside at that time, inside union.

Q. When did this occur?

A. It was before the strike.

Q. Can you tell us approximately about how long before the strike?

A. No, I don't know exactly, two weeks or a week ago before the strike.

Q. Did Kirschner have anything for you to sign?

A. Yes, he had a paper, and he asked me——

Q. Go ahead, go ahead.

A. He asked me I should sign. I says, "I am not in favor of signing." I says, "I don't belong to the outside and I don't belong to the inside. I don't want either way of them." He says I have to sign one of them.

Q. Who said that?

A. Kirschner.

Q. Look at this paper, Board's Exhibit 7, and tell us if that is the kind of a paper that Kirschner had?

A. I didn't read it. I didn't look at it at all.

Q. You didn't read the paper?

A. No. So he said to me, "You won't sign the paper then?" I said, "No." And he went in there to Frank Krup.

Q. The foreman?

A. Yes, the foreman. And then I heard they sign up the other one works inside with him, and then Frank come out [fol. 458] here. He says, "Louis, you sign the inside, but the Heinz Company wants no outsiders. If you sign outside, you won't have no job."

Q. And Krup is your foreman?

A. Krup is my foreman, yes.

Q. And this was said the same day that Kirschner asked you to sign?

A. Kirschner, yes.

Q. Did you sign?

A. I didn't sign nothing.

Q. Have you ever signed with the association?

A. No.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. This man Kirschner was a fellow employee, wasn't he, who just works there?

A. He works there, he is kind of a repair man.

Q. Now, Krup was your foreman?

A. He is my foreman.

Q. Just shortly before the strike your foreman recommended your discharge, didn't he?

A. Yes, he discharged me a couple of times. I took my lunch that time 11:00 to 12:00, well, 11 o'clock I went in for my time card and go out to lunch. He sent a man back to take place. When I come in up to his desk, he was sitting there. He said to me, "Louis, if you want to take your lunch, it is o. k., but you won't have no job this afternoon. You can't work for us no more." I says, "All right." I didn't pay no attention. I took my card and I went up for lunch, and after lunch, at 12 o'clock, I went back and start my job again.

Q. Well, now, your foreman complained twice about the way you were doing your work and wanted you discharged didn't he?

A. Complained about the union, but otherwise——

Q. Your foreman never complained about the union. Your foreman complained to Mr. Heinrich and wanted you

discharged twice because he claimed you weren't doing your work, didn't he?

A. No.

Q. Shortly before the strike, is that right?

A. No.

Q. Isn't it true that on the very day before the strike in the afternoon, you were in Mr. Heinrich's office because the [fol. 459] foreman had recommended your discharge, saying that you were not doing your work; isn't that true?

A. He didn't say discharge. He told me that when I went for lunch. I says, "When you want to fire me," I says, "then you bring me my money, and that settles it." That is what I told him.

Q. Mr. Heinrich said you had been there 10 years and he wouldn't let him fire you; isn't that right? Is that true?

A. What did Mr. Heinrich say?

Q. Mr. Heinrich said that afternoon that you had been there 10 years and he wouldn't let Krup discharge you?

A. Yes, we was up in the office. He said, Mr. Heinrich.

Q. So that you and Mr. Krup haven't got along very well; have you?

A. Well, Mr. Krup is a man, he can't get along with nobody.

Q. I know, but you and he couldn't get along anyway; could you?

A. Well, I can't do nothing to him. He is my foreman. I have to do whatever he tells me.

Q. So you have had trouble with him on more than one occasion, haven't you? You have had trouble with Mr. Krup on more than one occasion?

A. Well, the trouble——

Q. Let me ask it this way. More than once you have had trouble with Mr. Krup; haven't you?

A. Well, I don't call that trouble, because I know him. He is once with me—he is with me, the next time is with the other fellow. If you work along with him you get used to it, and you wouldn't even call that trouble. He is that way.

Q. Mr. Heinrich kept you on the job when Krup wanted to let you go, didn't he?

A. Well, I don't know nothing.

Mr. Reed: All right, that is all. That is all.

Trial Examiner Walsh: That is all.

(Witness excused.)

[fol. 460] ROBERT WEIKEL, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Robert Weikel?
A. That is correct.
Q. W-e-i-k-e-l?
A. Right.
Q. You live at 728 East Ohio Street, North Side, Pittsburgh?
A. Yes, sir.
Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. Yes, sir.
Q. About how long have you been employed there?
A. Oh, I would say about four years.
Q. What department?
A. The auditorium and service building janitors.
Q. State whether or not you have ever attended any Heinz Employee Association meetings?
A. Yes, sir.
Q. When?
A. Well, I don't know, just I imagine it was about before the first part of May.
Q. Where was the meeting?
A. At the Carnegie Library on the north side, on the corner of East Ohio and Federal Streets.
Q. That is the first meeting of the association?
A. At the Carnegie Library Music Hall, if I am not mistaken, I think it was.
Q. The testimony has shown that it was about May 11th, 1937. Does that refresh your recollection?
A. Well, I can't state whether that was the right date or not.
Q. Who did you observe in charge of that meeting?
A. Well, Mr. Bennett and a Mr. McDonald.
Mr. Bennett introduced him and Mr. McDonald spoke, and I would say that Mr. Bennett was in charge of it.
Q. Mr. I. C. Bennett?
A. That is correct.

Q. Did you observe any other bosses there? Did you personally observe any bosses there?

A. Well, no, I didn't, but I noticed several, well, quite a few of the office employees there.

[fol. 461] Q. Prior to that meeting had you been approached by anyone at work to join the Heinz Employees Association?

A. Prior to that meeting I can't say. I can't say whether it was prior to it or not, but I was approached.

Q. Before the strike?

A. Yes.

Q. During working hours?

A. Yes.

Q. By whom?

A. I was approached by Phillip Richards. He was a watchman. He is a doorman on the service building.

Q. Will you state what he said? What occurred?

A. Well, he didn't state much at all. He said that—he just asked me if I would sign up for it, and so on, and so forth.

Q. Did he have any paper with him?

A. Why, yes, he did. He had a little square piece of paper, if I am not mistaken.

Q. Did he hand you one?

A. No, he didn't.

Q. Did he show it to you?

A. Yes, he showed it to me.

Q. I show you Board's Exhibit 9. Will you look at it, read it, please, and state if that is the kind of piece of paper that Mr. Richards showed you?

A. Yes, this is it.

Q. Did you sign?

A. Why, I think I signed about two days afterward.

Q. Where were you when you signed?

A. Well, he was the doorman there. That is right where I was, at the doors.

Q. That is where you signed it?

A. Uh-huh.

Q. Why did you sign it?

A. Well, I was under the impression that it would be the best thing to do to keep out of trouble.

Q. What do you mean by that?

A. Well, I was under the impression that if you didn't

sign it, that it was going to be just too bad for you and your job.

Q. Is that the reason you signed?

A. That is just about the only reason than I can think of. I would also like to add that Mr. James Russell was also [fol. 462] present there, who has charge of the gate men, when I signed that.

Q. Did he have anything to say?

A. No, he did not have anything to say.

(The document above referred to was thereupon marked as Board's Exhibit 10 for identification.)

By Mr. Kleeb:

Q. I show you Board's Exhibit 10, marked for identification, and ask you to look at it and state if you have ever seen a paper like that before, and if so, where and what was the occasion?

A. I think this here was passed out to the employees not so long ago at the H. J. Heinz Plant.

Q. Do you know whether it was passed out?

A. Well, I couldn't say definitely whether that was it or not, but it sounds something similar to that, "American principles" and so *so* on and so forth. That sounds similar.

Q. State whether or not you have observed any boss or foreman passing out any literature at the H. J. Heinz Company?

A. No, I can't say that I did.

Mr. Kleeb: Cross-examine.

Cross-examination.

By Mr. Reed:

Q. Are you an officer of the Union now?

A. Well, I wouldn't say I was an officer. I am a delegate to the Pittsburgh Central Labor Board, and I am a steward, and also advertising manager on the newspaper that the union issues.

Q. This watchman that spoke to you about joining is an hourly worker, isn't he?

A. I don't know whether he is or not. I couldn't state that definitely.

Q. Of course, you know that office workers are eligible for membership in this association, don't you?

A. No, I don't know that. I thought that they was excluded.

Mr. Reed: That is all.

Trial Examiner Walsh: Anything further, Mr. Kleeb?

Mr. Kleeb: Just a minute, please.

That is all.

[fol. 463] Trial Examiner Walsh: That is all.

(Witness excused.)

Mr. Kleeb: May the record show that Board's Exhibit 10 for identification has been withdrawn, so that that number will be open for a future time?

If the Trial Examiner please, since the record will show that Board's Exhibit 10 was marked for identification, perhaps we had just better let it stand.

Trial Examiner Walsh: It hasn't been received yet.

Mr. Kleeb: Yes. I am sorry to have caused that confusion.

Trial Examiner Walsh: It is not an exhibit yet because it has not been identified yet.

Mr. Kleeb: That is right.

Frank Koontz.

Frank Koontz, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Frank Koontz?

A. I am.

Q. You live at 816 Vista Street?

A. Yes, sir.

Q. North Side, Pittsburgh, Pennsylvania?

A. Yes, sir.

Q. Are you now employed at the Pittsburgh plant of the H. J. Heiiz Company?

A. I am.

Q. About how long have you been employed there?
A. Five years next June.
Q. In what department did you work?
A. Branch house stock department.
Q. What is the branch house stock department?
A. You want me to give an interview of what goes on in there?
Q. Well, what do you do in it?
A. Well, I have two jobs there, two jobs there in branch house stock until I got hurt on a conveyor, a bottling conveyor, and I was given another job over in the cereal building until I was well.
[fol. 464] Q. Well, what was your general work, however, before you were hurt in the branch house stock department?
A. Running a bottling conveyor.
Q. Who is in charge of that department?
A. Charles Braun, Jr.
Q. Did you ever attend any meetings of the Heinz Employees Association?
A. No, sir.
Q. During working hours, state whether or not you have ever been approached by any boss regarding the Heinz Employees Association?
A. Yes; I was approached by assistant foreman, Greenier.
Q. Is that G-r-e-e-n-i-e-r?
A. G-r-e-e-n-i-e-r.
Q. Assistant foreman of what?
A. Of the branch house stock department.
Q. And when did this occur?
A. This either was the latter part of April or the first part of May, first week of May.
Q. State what occurred, please. What happened?
A. Joseph Greenier approached me, I think it was in the afternoon around 2:30 to 3:00 o'clock. He come up and asked me, he says, "Frank," he says, "will you sign this petition?". And I read the paper, and it had something on there sort of purplish ink on the top "We hereby undersigned"—to sign, I am not sure, but the Heinz Employees Association was on there. And I says, "Well, how does this thing go, Joe?". He said, "Well, you sign on the one side will be for outside union." He turned the sheet over and he said, "If you sign on this side it will be for the inside union." I took the pencil, and I says, "All right, I will sign

on the outside for the outside union." And he went on down after he got my signature. He went on repeating to the rest of the fellows and they did the same thing, until another fellow, he told me, he says, "It doesn't make any difference which side you sign, it is all for the company union." And I tried to locate this fellow, and I found him downstairs.

Q. Who is that?

A. Joseph Greenier. He was downstairs where he didn't belong, unless he had to see the foreman, Charles Braun, Jr., if he had to be down there for a certain thing or not, that is, to pick any items up or to find out if they want to pose [fol. 465] for placements of cases or any important matter of signing slips, but this here was not his job, to get down into the second floor to get these other fellows to sign their names on this petition.

And after this one fellow told me that slip is for nothing but the company union, well, then, I caught him down there and I said, "Joe, give me that slip back." And he says, "What do you want it for?" And I told him I want to erase my name off. He said, "What for?" I says, "You told me it was for the outside union on the one side and on the opposite side was for the inside." So he gave it to me without any argument, and I rubbed my name off. And after my name was erased, my brother, my youngest brother, he followed suit.

Q. What is his name?

A. William Koontz.

Q. Let me show you Board's Exhibit 7. Would you take a look at that, Mr. Koontz, and state if that is like the paper that you signed? Is that the kind of a paper that Greenier had?

A. This wasn't the kind.

Q. Wasn't there any typewriting or writing on the paper that Greenier gave you to sign?

A. There was typewritten words on it.

Q. What?

A. There were typewritten words, or it could have been a stamp, too.

Q. But it was not like that paper?

A. No, sir.

Q. Referring to Board's Exhibit 7.

A. It was a small plain sheet.

Q. Smaller than that (referring to Board's Exhibit 7.)

A. Just a little smaller.

Q. Did Greenier say anything to you after you erased your name?

A. Yes. He says to me, "Well, Frank," he says, "Well, you are liable to lose your job."

Q. Did you say anything in answer to that?

A. I said that will be my chance I take.

Q. Following my incident, did any other boss ever talk to you about the Heinz Employees Association?

A. Yes, sir. There was a boss named C. A. Braun, Jr. He told me, he says, "Frank," he says, "what has this company ever done to you?" I says, "Surely," I says, [fol. 466] "they did enough to me." I says, "For one part you tried to help me out on one case, but that is forgotten," I said, "This is a different thing altogether." I said, "This is not against you; this is against the company." Charlie Braun says, "Well you leave me out."

Q. He said what?

A. He said, "Well, you leave me out," on this other case that I thought he was helping me out on, one time I was laid off. And he says, "Well, what has the company done to you that you don't like about it?" "Well," I says, "you know as well as I do, Charlie." He says, "That is the only reason?" I said, "If you were in my place, I think you would say the same thing."

And he says, "Well, Frank," he says, "you and I got along pretty good together and you did fairly good with your work." And he said, "Well, if that is the way you feel," he says, "I can't help you." He said, "We are giving you so much there now that you never got before." He said——

Q. Speak out, please.

A. He says to me, "The union ain't going to give you no wages." He said, "We helped you out through the good times—through the depression." And I says, "Charlie," I says, "I don't know what is going on here in the company union, and I will have my say-so about it."

Q. Did Mr. Heinrich, the plant superintendent, ever talk with you about unions?

A. Yes, he did.

Q. Was it before or after this conversation with Greenier?

A. This was about around the same time.

Q. But before the strike?

A. Yes, sir.

Q. Now, what did Heinrich have to say and where did he talk to you?

A. He was talking to me up—talking to me up in the men's dining room. I happened to be going up there for my dinner. I believe it was my dinner, that was somewhere around the noontime, and after the flood, and he approached me, called me to the side as I was going up to get my meal.

He says, "Frank." I says, "Yes." He said, "Come here." And I walks over to him. He says, "Frank," he says, "I am surprised at you." And I said, "What for?" He said, "About you going to the outside." And I said, [fol. 467] "Well, what is that?" He said, Well, didn't we help you along through the depression?" And I said, "Yes. I seem to hear that every place I go."

And Mr. Heinrich said to me, he says, "Your union should give you the wages, the way you speak." And I says, "Well, I am sorry, Mr. Heinrich." (Pause) I had it on the tip of my tongue.

Mr. Reed: I would like the Stenographer to note the pause there.

A. (Continuing:) Mr. Heinrich says to me, "Frank" he says, "the bosses treated you pretty well, didn't they?" I says, "There was only one that treated me right." And he said, "Who was that?" And I said, "Charlie Braun." And he said, "What have you got against the company that you don't like about it?" And I said, "Well, about that one month's vacation that you gave me." It wasn't one month altogether. It was two weeks one time and then two weeks another time, because he took somebody—he asked me why. And I told him, I says, "You always take the foreman's word, but when it comes up to somebody like a poor working fellow, why, you won't take their word. You always seem to go up and talk to the foreman or the forelady without giving the working man a chance to explain his side of view when the two of them are together." He never puts the two of them together. He always keeps the one on the one side and then he goes and talks to the other one, and they will get your side of the story, and then he will go over and talk to the other one. Whether your side

of the story was right or not, he will take the other side's first. Why? Because it is for the company.

Q. How long did this conversation last?

A. Oh, I would say about an hour or an hour and a half.

Q. You weren't doing any work at the time when you were talking to him, were you?

A. No.

Q. Do you know Oscar Hayes?

A. Yes, I do.

Q. What position does he hold, so far as you know?

A. He is—when Mr. Heinrich is not in the building—I believe Mr. Heinrich asked him to take his position.

Q. Did Mr. Hayes ever discuss unions with you?

A. He come around one morning before the strike and he says to me, "Don't be like that dumb brother of yours. [fol. 468] If anybody asks you to join the outside union, tell them to go to hell."

Q. Did you know to which brother he referred?

A. He meant my brother John Koontz.

Q. Was he an employe at the factory at the time?

A. Yes, sir.

Q. Have you attended any Heinz Employee Association meetings since the strike?

A. One. That was down in the Carnegie Music Hall.

Q. Since the strike? Since the strike was over?

A. Since the strike was over.

Q. Since the election have you been there?

A. No.

Mr. Kleeb: Cross-examine.

Cross-examination.

By Mr. Reed:

Q. This Oscar Hayes wasn't your foreman at all; was he?

A. No.

Q. And this first man that you spoke of, that you called assistant foreman, what was his name?

A. Joseph Greenier.

Q. He's just an hourly employee, isn't he?

A. Yes, he is.

Q. Why do you call him a foreman?

A. Because he tells me what to do, and I have to listen to him, because if when I don't do what he tells me to do,

then he turns down to the boss, and the boss comes up to me and asks me why didn't I do it. So what would you call him?

Q. Do you regard everybody as a foreman who passes on any orders to you?

A. Yes. If they wear a pair of white pants and a white cap and a grey jacket.

Q. That makes him a foreman?

A. Mostly all of them.

Q. Now, what you went to Mr. Heinrich about is because your father had been pensioned; wasn't it?

A. I didn't go to him. He called me.

Q. You and your brother complained that your father had been pensioned; didn't you?

A. Not that I know of.

Q. Well, wasn't that what you were talking to him about?

A. He mentioned that to me, which I didn't mention in that conversation because I was ashamed of that.

[fol. 469] Q. You were ashamed of that?

A. To mention about my father's pension.

Q. Well, isn't that the reason you went to Mr. Heinrich?

A. I didn't go to him.

Q. Well, when did you go to him? Did you not go to him on any occasion about your father's being pensioned?

A. I talked to him about that, yes, but I didn't go to him. He called me.

Q. He called you about it?

A. He called me.

Q. You had been talking about it, had you?

A. I had been.

Q. And he called you and asked you what your complaint was?

A. Yes.

Q. Is that right?

You had been discharged before at the Heinz plant; had you not?

A. That is right.

Q. And then Mr. Heinrich took you back after a while?

A. I begged him.

Q. To take you back?

A. That is right.

Q. And then when your father was pensioned, he sent for you to talk about that?

A. Who sent?

Q. Heinrich sent for you, and didn't he talk to you in the dining room about your father being pensioned?

A. He talked to me about the pension, yes, but I don't recall about him sending for me.

Q. All right. Now, when he was asking you what was wrong and what you were complaining about, he was talking about your complaints about being discharged, and about your father, and so on; wasn't he?

A. Yes, he did.

Q. And he wasn't talking to you about unions. He wanted to know why you were dissatisfied; didn't he?

A. He talked about both.

Q. You are the man that was arrested at the meeting at Carnegie Hall and taken out?

A. Yes, sir, I am.

Mr. Reed: That is all.

[fol. 470] Mr. Kleeb: Just a minute.

Redirect examination.

By Mr. Kleeb:

Q. You stated a little while ago in answer to a question on cross-examination about your father's pension, that you were ashamed. What were you ashamed about?

A. Because of the pension that they was giving down there for a man of his age and for the ability or for the time that he put in down there and for the good work he put in down there.

Q. How much time did he put it?

A. He put in 42 to 44 years.

Q. What is his pension?

Mr. Reed: This is objected to.

Mr. Kleeb: Counsel for the Respondent raised the question of pension. I think we are entitled to know.

Trial Examiner Walsh: Objection overruled. He may answer.

A. It was $40 a month.

Mr. Kleeb: That is all.

Recross-examination.

By Mr. Reed:

Q. And his position had been laborer all the time, hadn't it, all this time that he had been working there?

A. Would you call a watchman a laborer?

Q. Well, he was a watchman; is that it?

A. At the time he was laid off or pensioned.

Q. And you objected to his receiving only $40 a month?

A. Well, that is what I was talking with Mr. Heinrich about.

Q. Yes. But, of course, the pension was an entirely voluntary thing by the company? The employees didn't contribute to it at all; did they?

A. Well, we asked—rather, I asked Mr. Heinrich that that wasn't suitable for him.

Q. Wasn't what?

A. It wasn't satisfaction, in other words.

Q. Your father thought it was all right?

A. No, he did not.

Q. You know that the employees contributed nothing to that, and that the company gave the pension voluntarily; [fol. 471] don't you?

A. I don't know nothing about that pension business.

Mr. Reed: Well, then, I guess that is right and neither do the rest of us.

That is all.

Trial Examiner Walsh: You are through, too, are you, Mr. Kleeb?

Mr. Kleeb: I am sorry. Yes, I have finished.

By Trial Examiner Walsh:

Q. Were you here this morning, Mr. Koontz?

A. No, sir.

Q. We have had some difficulty understanding just what a boss is. How do you know yourself when a man is a boss, one that you consider a boss?

A. One that can order them around and make them do as they show them to, that is why I call them a boss.

Q. Now, this man Greenier—is that his name?

A. That is right.

Q. Do you consider him a boss?

A. Yes, sir.

Q. He orders you around, does he?

A. Yes, sir.

Q. Tells you what work to do?

A. Yes, sir.

Q. Suppose you didn't do it?
A. He would go down and report me.
Q. To whom?
A. To C. A. Braun, Jr., my foreman.
Q. He is your foreman?
A. Yes, sir.
Q. Did Greenier dismiss you? Did he fire you, Greenier?
A. No. He has the say-so. He could put in more words and make it — make the foreman believe him more than the foreman would believe me.
Q. He would report directly to Mr. Braun?
A. Yes.
Q. Does the uniform of a man have anything to do, in your opinion with whether he is a foreman or not?
A. Well, in my way, he was just because he was the last one to get one of them suits.
Q. Well, does the uniform make him a boss?
A. Well, to show he is a little higher up that he was. Everybody cannot get them.
Q. Well, is there anybody in the factory, so far as you know, outside of the people that you call bosses who wear [fol. 472] these special uniforms?
A. Well, there is like quality control, and test soups, and them sort of things too, but I would say they are all in the line of that duty. If they see anybody loafing, they always report it to—in other words, they call them stool pigeons.
Q. Now, the conversation you have just been testifying about with Mr. Heinrich, you wish to be understood that you were called in by Mr. Heinrich?
A. That is right.
Q. You did not go to him?
A. In the dining room?
Q. Yes.
A. That is right.
Q. He asked you to come and see him, is that right?
A. Yes, I was going for my meal when he called me.

Trial Examiner Walsh: That is all.

(Witness excused.)

Mr. Kleeb: John Koontz.

JOHN KOONTZ, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are John Koontz?

A. Yes, sir.

Q. You live at 2224 Ridgewood Avenue, Pittsburgh, Pennsylvania?

A. I just moved recently, Mr. Kleeb. It is 357 Reets Avenue, in Etna, Pennsylvania.

Q. That is your present address?

A. That is the present address.

Q. Are you the brother of Frank Koontz who just testified?

A. Yes, sir.

Q. Are you now working at the Pittsburgh Plant of the H. J. Heinz Company?

A. Yes, sir.

Q. How long have you been employed there?

A. Well, I have been working off and on. The last time it was four years in August.

Q. What department?

A. Receiving department.

Q. Who is in charge of that department?

A. John Scrvatious.

[fol. 473] Q. Do you know how to spell his name?

A. S-c-r-v-a-t-i-o-u-s.

Q. Do you know Oscar Hayes?

A. I do.

Q. What job does he hold, in your opinion?

A. He is assistant superintendent.

Q. Assistant to whom?

A. Mr. Heinrich.

Q. Mr. Koontz, do you recall anything unusual occurring at work the latter part of April, on or about April 23rd of this year?

A. Yes. Mr. Heinrich had left word in the receiving department that he wanted to see me at the factory office, and I was busy at the time with a load receiving. I told the boss would it be alright if I saw him a little later until I re-

ceived the one load and then I would go up to see him. And that was in the afternoon when I went up there and Mr. Heinrich wanted to talk to me. He first started the conversation by this pension that was so mentioned by my brother before. And he says, "John," he says, "I have tried and I will try to get your Dad a little more pension money per month." And then he says, "Now, John," he says, "the reason I like to talk to you," he says, "is because you seem to be about the best of the three boys." He says, "You seem to understand better." He says, "Your brother Frank and Bill," he says, "They don't understand as well as you do."

"Well," I says, "as far as Frank and Bill go, Mr. Heinrich," I says, "they are on their own." I says, "Frank is married, and he has his own to take care of, and I have my own." I says, "Whatever you have to tell me about them," I says, "I have nothing to do with it. They are their own bosses, as far as that goes." He says, "Not meaning it that way," he says, "but," he says, "you know that the company has made a place for your brother Bill since your Dad has been pensioned." I says, "Yes, sir, we appreciate that, as far as that goes." And he says, "Now," he says, "we feel he is not doing the right thing by us." He says, "He really ought to side in with the company, the one that is doing him a lot of good." And I said, "Meaning what, Mr. Heinrich?"

He says, "Well," he says, "you have attended a meeting a little bit ago there." He meant the outside union meeting that I attended at that part of the time he mentioned, [fol. 474] the latter part of April, at the hall on Voscamp Street, which was the second meeting the A. F. of L. had.

Q. Was it prior to this conversation?

A. Well, it was before that, yes.

Q. That you attended the meeting?

A. Yes, and that is what he called me in there for, but he just worked around that point. He didn't want to point directly to the fact that he called me up there for the union.

Q. Go ahead.

A. And he told me then, and he says, "John," he says, "we class you to be as good as your Dad." He says, "I don't know why you should do this to the company."

I says, "Mr. Heinrich," I says, "you can't accuse anyone because he just goes ahead and attends a meeting. After

all, you can go to an association meeting, an inside union meeting." I says, "There is nothing wrong with that." He says, "Well, John," he says, "you know that we have promised you the bosses' job in the machining department, and there isn't anything more than I can do for you," he said, "at the present time." He said, "So you can't get it."

And I told him, "Well," I says, "as far as that goes, Mr. Heinrich, that don't say that I had signed one way or the other." He really was directing me that I should stick to the company's side.

Q. About how long did this conversation with Mr. Heinrich take place?

A. Oh, it last for about 20 minutes, and Miss Weisman was there also. He asked Miss Weisman, he said, "Didn't I mention to you about Koontz?" He says, "Ask her if you want to verify the fact if I did not promise you a boss' job."

Q. Who is Miss Weisman?

A. Miss Weisman, she is the superintendent over the girls.

Q. Is that Lillian Weisman?

A. Lillian Weisman.

Q. And what did she say?

A. She says, "Yes, John, that is true. Mr. Heinrich and I, we have been talking about it." She says, "He sort of mentioned it to me."

Q. Mr. Koontz, had you up to that time been active in your outside A. F. of L. union?

A. Well, I attended that one meeting, and some of the [fol. 475] fellows that had been there, naturally, they turned it into Mr. Heinrich, or how he got it, or some way or another that I was there, and he wanted to call and find out. That is the reason he got me up in the office.

Q. Did anything unusual occur the next day after this conversation?

A. Yes.

Q. State what happened?

A. Mr. Hayes, the assistant superintendent, he was sort of trying to get around me. He saw me more than once. I knowed there was something there that he was driving at. I had an idea. And he approached me on the first floor of the spaghetti building, and there happened to be some fellows around there. We stood right there by the trucks and sort of leaned on them.

He says, to me, "John," he says, he says, "What do you think of unions?" I says, "Well, Mr. Hayes," I says, "I think they are all right."

He says, "What makes you think they are all right?" He said, "Do you know," he said, "that Frank Novak," he says, "that he is getting $5 a head for every A. F. of L. member he signs up?"

I says, "Mr. Hayes," I says, "that is not true." I says, "Where did you ever hear that at?" I says, "Frank Novak would never do no such a thing." I says, "I will ask him, and you may have to prove it, as far as that goes."

And then he kept on talking around, and he said that, "Why, do you want to pay in those big fees, your initiation fees and your dues?" He said, "You are just feeding up these big men. They have got a big hall in town, and everything." He says, "You don't have to have that stuff." He says, "All you are doing is feeding them." And he sort of got a little peeved about it.

I says, "Mr. Hayes, there is no use getting peeved about the thing." I says, "We are just talking it over. I see the opposite, I see the outside, but I can't see the inside."

A. And he told me I better get onto his side of the fence.

Q. Were you ever approached by anyone at the plant before the strike to join the Heinz Employees Association?

A. No, I haven't been bothered by anyone, Mr. Kleeb.

[fol. 476] Q. Since the strike, state whether or not any boss has said anything to you or to anyone in your presence about the association or about outside unions?

A. Well, it was after the election of Lutz & Schramm. That was Mr. Hargraves. He come in early. He was bubbling over that morning. He was so thrilled and happy that the association won up there, from the conversation and what I have heard.

Q. What do you mean "Lutz & Schramm?"

A. Lutz & Schramm had an election with the A. F. of L. and the association won.

Q. What is Lutz & Schramm?

A. Lutz & Schramm, that is the food-products plant. It is on the order of Heinz, pickle, preserves, and so on, they put up that stuff.

Q. Go on. Did you hear Mr. Hargraves?

A. I couldn't overhear. He was right at the steps where Mr. Hargraves stopped to talk with this one girl, and he sort of mentioned it.

He said, he says, "Well, what do you think of that?" He says, "It is pretty good." He says, "The association won out." And he said, "I don't see why the Heinz Company could not do it. It is a much better place to work than Lutz & Schramm. They treat them better than Lutz & Schramm does."

Q. Who is Mr. Hargraves?

A. Mr. Hargraves, he was the personnel man there at the time.

Q. Do you know whether he is now?

A. I don't know. He made a protest to Heinrich that people don't like him as they used to; and he wanted a job lower down, or a boss' job.

Q. Do you recall the Labor Board election among the Heinz employees June 8th of this year? Do you recall that election being held?

A. I do.

Q. Were you working at the Pittsburgh plant of the company on June 14th of this year?

A. Yes, sir.

(Thereupon a document was marked as Board's Exhibit No. 11 for identification.)

(Thereupon a document was marked as Boards Exhibit No. 12 for identification.)

[fol. 477] (Thereupon a document was marked as Board's Exhibit No. 13 for identification.)

By Mr. Kleeb:

Q. I hand you Board's exhibit 11 for identification. Will you look at it and read it and say if you have ever seen anything like that before?

A. Yes.

Q. You have?

A. Yes.

Q. Where have you seen it?

A. It was posted on the time clock, something similar to this. They had a notice up there.

Q. The time clock of the company?

A. The time clock where you punch your time in.

Q. It was a bulletin?

A. It was sort of a bulletin. That was stuck on the glass in front of the time clock where you couldn't help seeing it.

Mr. Kleeb: I offer it in evidence.
Mr. Reed: No objection.

By Mr. Kleeb:

Q. Were you working on October—Strike that. Were you work- on July 2nd of this year?
A. Yes, sir.
Q. I hand you Board's exhibit 12 for identification. Look at it and read it and state if you have ever seen that before.
A. I didn't see this, but I was told about this being given to each foreman to read to the people, about the union activities during working hours.
Q. Was it ever read to you?
A. It wasn't read to me, no, sir, but Mr. Riley did tell us that in the negotiation, that is, we was up there a couple of times, that our men was being scolded and laid off on account of that purpose, and he said that he issued that to the foremen, that nobody was supposed to do any of that work on company time.
Q. Mr. Riley is a director of the company?
A. Yes, sir.

Mr. Kleeb: I offer it in evidence.
Mr. Reed: No objection.
Mr. Kleeb: If the Trial Examiner please, I don't know if the record shows that you admitted Board's exhibit No. 11, and now 12. May the record show that, please?
Trial Examiner Walsh: It may yes, I would like to see [fol. 478] Board's exhibit 12. This hasn't been identified?
Mr. Kleeb: Oh, yes. It has been identified. There has been no objection.
Trial Examiner Walsh: The witness could not——
Mr. Reed: I didn't say there was no objection to it being offered in evidence. You asked him, didn't you,——
He said that he heard of somebody seeing that?
Trial Examiner Walsh: That can't be conclusive as identification, the testimony of the witness thus far.
Mr. Kleeb: Well, the testimony of the witness was, I admit, not identifying the document. However, he referred to a conversation with Mr. H. N. Riley, who stated that that had been issued, as a statement of policy, had been issued to the foremen to read to the employees, and I thought that the company would readily admit they issued it.

I offered it and thought Mr. Reed did not object. However, if he did not, I am sorry.

Mr. Reed: I don't object to it in its proper location. It was put out but not read to the men. It was put on the bulletin board.

Mr. Kleeb: With that qualification, sir, I would like to offer it.

Mr. Reed: Yes. All right.

Mr. Kleeb: Fine.

Trial Examiner Walsh: This has all gone in the record, Mr. Reporter?

The Reporter: Yes.

Mr. Kleeb: With that qualification, I renew my offer.

Trial Examiner Walsh: Yes. Perfectly all right.

(Thereupon the document heretofore marked as "Board's Exhibit No. 11" for identification was received in evidence.)

(Thereupon the document heretofore marked as "Board's Exhibit No. 12" for identification was received in evidence.)

By Mr. Kleeb:

Q. Were you employed October 18th of this year?

A. Yes, sir.

[fol. 479] Q. I show you Board's exhibit 13 for identification and ask you to read it and state if you have ever seen a document like that before.

A. This was a notice posted on the time clock; one of the notices.

Mr. Kleeb: I offer it in evidence.

Mr. Reed: That's right. No objection. Same one, isn't it?

Mr. Kleeb: The exhibit is the same as 11 except a different date. Apparently the same bulletin posted two different times.

Trial Examiner Walsh: What is the date on that?

Mr. Kleeb: October 18, 1937.

Mr. Bostwick: Mr. Examiner, it is the same notice but the dates are different.

Trial Examiner Walsh: It may be received.

(Thereupon the document above referred to was marked as Board's Exhibit No. 13 and received in evidence.)

By Mr. Kleeb:

Q. I show you Board's exhibit 10 for identification and ask you to read it and state if you can identify it (handing to witness).

A. This was started from the time office by the association.

Q. By the Heinz Employees Association?

A. Yes.

Q. Where is the time office?

A. The time office is at the entrance to the factory. That is, on the factory side.

Q. Was it passed out on company property or outside of company property?

A. It was up on the step of the time office. That step is what's company property, and it was up on the step.

Q. Who was passing out these papers?

A. Stanley, I don't recall his last name; that's the one I received mine off of. He works right now in the tank shop, on the car repairing.

Q. Is that where you received your copy?

A. I received mine as I was coming out of the plant.

A. And where was the person standing that handed it to you?

A. On the step of the time office.

[fol. 480] Mr. Kleeb: I offer it in evidence.

Mr. Reed: This paper, exhibit 10 for identification, was passed out right out front of the office where your union and other organizations frequently pass out bills and cards, was it not?

The Witness: I often pass out leaflets, but we never end up on the step of the time office to hand them out.

Mr. Reed: How high is the step?

The Witness: I couldn't guess what the inches were, or anything, but the first step of the time office.

Mr. Reed: Are you distinguishing between this as having been passed out by having his foot on the step and the others who had their foot off the step?

The Witness: As Mr. Kleeb asked me, if that's what you call company property, the time office, that's where it was handed out.

Mr. Reed: It's handed to the men as they leave work and as they are on their way to go out the gate, just as you handed out literature?

The Witness: As it was handed to me, it was as I was coming out of the plant.

Mr. Reed: But as you were on—But as they were on their way home?

The Witness: I couldn't say that, only when I got my copy.

Mr. Reed: That's where the passing out was taking place when you got it?

The Witness: When I received it, yes.

Mr. Reed: And all you saw of the distribution was to the men on their way home?

The Witness: I didn't watch it being distributed to the other men. All I know is when they handed me that on my way home.

Mr. Reed: This is objected to. It doesn't connect the company in any way. It's a circular of the association, apparently, put out, and any organization can pass out literature to the employees on their way home. There is nothing affects or binds the company. It's a public street.

Mr. Kleeb: This may be a rather ridiculous distinction between passing it out on the first step and the street. The only basis I can state for admitting this as an exhibit is the testimony to date to show the preference of the company to the association and its antagonism toward the A. F. of [fol. 481] L. organization.

Mr. Reed: That certainly doesn't prove it.

Trial Examiner Walsh: Do you undertake, Mr. Kleeb, to connect this man intimately with the company as you go along?

Mr. Kleeb: No, sir, not at this time, I can't say I can connect it any more than it has been connected by this testimony.

Trial Examiner Walsh: I will reserve decision on this until I can read it a little more carefully.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. That step is the step where the newsboy leaves his papers as the men leave, isn't it?

A. The newsboy leaves his papers on another step. This is a step at the main entrance. There is three entrances to the time office.

Q. This man, Servatious, or whatever his name was, was just the head man of the receiving staff, wasn't he? He only has three men working for him, doesn't he?

A. Yes, sir.

Q. He isn't a foreman or superintendent or anybody in that capacity?

A. When they are on a monthly payroll they are classed as foremen.

Q. That is, you class them as foremen when they are on the monthly payroll?

A. He issues orders to me, and there is no outsider can come to me and say, "John, you don't do this job, you go ahead and do another job." I don't pay no attention to them. As the discussion was before, about foremen's uniforms, and I know if I work in the receiving and I am to be classed as Servatious why don't I have one of them uniforms?

Q. There is nothing to stop you.

A. Oh, yes, they don't fool me none in the stockroom, if I wanted to buy it.

Q. Didn't you buy a cap there the other day?

A. No, I didn't buy any cap.

Q. You had a foreman's cap, didn't you?

A. It is one that the foreman throwed it away, that I wear around.

Q. You wear that around, don't you?

A. That's outside the plant.

Q. There isn't anything to prevent you from buying a [fol. 482] foreman's uniform, is there?

A. I don't know whether they made a change since I have been testifying, but before I couldn't.

Q. Did you ever try?

A. Yes.

Q. When?

A. A good while ago?

Q. From whom?

A. From Mr. Maynard, at the time?

Q. And did he refuse to sell you one?

A. He said, "John, we only sell that stuff to the foremen." He said, "You would have to get an O. K. from Heinrich for that."

Q. When was that?

A. That has been long ago.

Q. How long ago?

A. That has been a couple of years back.

Q. You know lots of men wear foremen's uniforms that are not foremen at all?

A. As my brother stated, there is quality control, but it's a different section of the building.

Q. Messengers wear them, don't they?

A. Some of those are on monthly payroll, too.

Q. Some of those are on monthly payroll?

A. Not in the same garb. They have the tan coats that the foremen used to wear.

Q. They wear white, don't they?

A. White pants.

Q. And white coats?

A. White shirt.

Q. Do the messenger boys wear white coats or don't they?

A. That's in the factory office. I guess Heinrich gave them the O. K. where I couldn't get that stuff?

Q. You never asked Heinrich?

A. It wasn't possible to ask Heinrich. It would be impossible to ask Mr. Heinrich, because he told me I was no foreman yet.

Q. He did tell you that?

A. If I could take a boss' job in the receiving department, as he had promised.

Q. You are talking about what Heinrich would have said to you if you had asked him for a uniform; is that right?

A. He would have gave it to me before if I had been [fol. 483] allowed to wear them.

Q. When your father was pensioned, how old was he?

A. 72.

Q. And you did a good deal of talking and your brother did a good deal of talking he shouldn't have been pensioned?

A. I could have corrected my brother's statement. Mr. Heinrich had us confused about that pensioning. I believe he talked to me more about it, because I better understand that than Frank or Bill did. It so happened one day, being you mention it, you mentioned the pension, he called me up in the office. I didn't know what he called me up there for. It was Mr. Hargraves told me Mr. Heinrich wanted to see me in the office.

I went to the office and there was Mr. Hayes, Hargraves, and Heinrich in the office and he said, "John, your Dad

don't seem to like the idea of how much we are giving him for pension, and we don't like to have it spread around." And he said, "If you would only talk to your Dad about what we are giving him for pension."

I thought I would be called up because my Dad told me about Mr. Hargraves, and he said,——

Mr. Reed: I object to this. That's conversation between the man's father and Hargraves he is repeating.

Mr. Kleeb: You are questioning him.

Mr. Reed: I didn't ask him this question. The question I asked him is that. If you can stop him I wish you would do it; I can't.

By Mr. Reed:

Q. Will you answer this question Yes or No? Is it a fact that you complained to a number of people that your father's pension was not adequate? Is that a fact or isn't it?

A. No, sir.

Q. You said nothing to any other employees about it?

A. No.

Q. And you were not sent for by Mr. Heinrich to discuss your father's pension?

A. Yes.

Q. What caused him to send for you?

A. Like I have been telling you, but you stopped me from the story, so I guess I can't tell it.

Q. You say you had not complained to any employees or made any remarks about the company having given an [fol. 484] an inadequate pension to your father?

A. No, because I know how the company fellows felt as to what he should be getting a month as to pension.

Q. How would Mr. Heinrich know there had been complaints, to send for you?

A. You cut me off when I was coming to that point.

Q. When he sent for you on this occasion the thing he talked about first and most of the time was your father's pension, wasn't it?

A. It's all about the pension, yes, certainly.

Q. You say you know he sent for you, really, to talk to you about the union?

A. That was at the time after that; it was twice.

Q. The time you talked about first, when you first gave your testimony, the only incident you talked about in your direct examination; you said that you knew Mr. Heinrich wanted to talk to you about the union, or something like that.

A. After my Dad told me to talk to Hargraves. I said, "You shouldn't have told Mr. Hargraves about wanting more money." I said, "I am going to be called down to Mr. Heinrich's office," which I was, a day later.

Q. You knew you were going to be called about the pension?

A. Yes.

Q. Then why do you say you knew you were being called about the union?

A. I said there was another time after that when Heinrich used the same gag of the pension. He said, "I am going to talk to the directors to try to get your Dad a little bit more per month."

Q. Why do you say that was a gag, sending for you?

A. He would sort of try to get me up there to ease it off as if he wasn't hitting directly at the union.

Q. Then he came around to the union?

A. Yes.

Q. If he wanted to talk to you about the union, he needn't have had any other excuse?

A. That's the way he opened the conversation.

Q. Were you expecting he would talk to you about the union?

A. Yes, sir.

Q. Just the same as you think Mr. Hayes' remarks to [fol. 485] you were—Strike that out.

Just the same as you say Mr. Hayes was trying to get around you to talk about the union?

A. Yes, sir.

Q. You are an officer of the union?

A. Yes, sir.

Q. And you were going around with a chip on your shoulder in those days?

A. Oh, no.

Q. Just looking for somebody to say "union" to you, weren't you?

A. No, nothing exactly.

Q. Almost, weren't you?

A. No, not almost, either.

Q. So when any foreman or official got near you you thought he wanted to talk union?

A. It seemed Hayes never did go around me like that before and it seemed he wanted to have something to say to me, and all of a sudden he got strength enough, or whatever you want to call it, to come up and talk to me about it.

Q. You say that Hargraves was delighted when the association won the Lutz & Schramm election?

A. No, they claim it's the same company, Wilson & Schramm. I happened to see Mr. Hargraves that morning, as I have stated, about the association, but the reason I know of it is that passing leaflets out at Wilson and Schramm the people would often tell me that, "You are out; you don't have a chance at Wilson and Schramm." He said, "We are backed by the association that's at the Heinz Company. They are uniting, and Mr. I. C. Bennett has made different speeches at their meetings."

Q. You are swearing under oath that the Heinz Employees Association is the same association that won the election at Lutz & Schramm Company; somebody told you that one of them was backing the other; is that right?

Mr Kleeb: I object to that. He didn't swear that. He said he heard it was the same.

By Mr. Reed:

Q. Do you say that the association which won the election at Lutz & Schramm is the same association that was running against you at the Heinz Company?

A. No, I don't say it is, but it is being operated by McDonald that started the association at the Heinz Company and it started up there at Wilson and Schramm, [fol. 486] and I. C. Bennett was up there as a speaker.

Q. Do you know of any union men that go around and speak at other plants and elections?

A. At union meetings, yes, sir.

Q. And you know that two unions could hire McDonald as their attorney if they wanted to. That doesn't prove they are the same association, does it?

A. Certainly it does.

Q. It proves it, does it?

A. It don't exactly prove it, but it shows it is the same association.

Mr. Reed: Some of my clients wouldn't want to be responsible for the others.

That's all.

Mr. Kleeb: That's all.

(Witness excused.)

Mr. Kleeb: Chester Gutowski.

Chester Gutowski, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Chester Gutowski?

A. I am.

Q. Speak out loud enough so every one can hear, will you please?

Q. You live at Fritz Street, South Side, Pittsburgh?

A. That is right.

Q. You are now employed at the Pittsburgh plant of the H. J. Heinz Company?

A. I am.

Q. Approximately how long have you been employed there?

A. Over four years.

Q. In what department?

A. Branch-house stock.

Q. What was the nature of your work?

A. I operate an electric tractor.

Trial Examiner Walsh: An electric what?

The Witness: Tractor, indoor tractor.

By Mr. Kleeb:

Q. And operating that comprises what kind of work? What do you do?

A. I haul soup, sterilizing-department soup from the sterilizing department into the labeling department. There it is labeled.

[fol. 487] Q. It's all on the same floor?

A. Same floor.

Q. Who is in charge of that department?

A. Charles A. Braun, Jr.

Q. About how many employees are in this department, approximately?

A. Now there are, approximately, 30.

Q. Do you know who was Mr. Braun's immediate superior?

A. I would say Mr. Heinrich.

Q. Were you ever approached by anyone during working hours regarding the Heinz Employees Association?

A. I was.

Q. When?

A. At least the first part of May or latter part of April. I can't fix it specifically.

Q. Of this year?

A. This year.

Q. By whom were you approached?

A. Joseph Greenier.

Q. Who is Joseph Greenier?

A. A straw boss.

Q. What does he do, so far as you know?

A. In my department, that is, the branch-house-stock department, he has charge of the third floor where goods are stacked.

Q. Does he stack himself? Does he do stacking?

A. Occasionally he does.

Q. As a general rule does he?

A. I would say 50-50.

Q. Did Greenier approach you during working hours?

A. He did.

Q. Could you tell us what he said and what you said, on this occasion?

A. I was on my machine at the time he stopped me and asked me whether I wanted to join the Heinz Employees Association. He said it was an association, a union formed by a group of men, a group of employees. I told him I didn't want to join. Whereas he asked my name.

Q. Sir?

A. Regardless of that, he wanted me to spell my name, [fol. 488] and he put it down on a white piece of paper.

Q. Did you sign anything.

A. No.

Q. Did he show you any paper?

A. He did not; a blank piece of paper and he put it down himself.

Q. Did anything else occur following that with reference to the Heinz Employees Association while you were at work?

A. Yes. About a day or two later I. C. Bennett was on the fourth floor where I work, with a sheaf of papers in his hands, talking to Mike Sabota.

Q. Who is he?

A. He has charge of shakers and stacking in the department.

Q. What was unusual about that?

A. I. C. Bennett has never been on the floor before during working hours. I have never seen him. His job is upstairs on the sixth floor and he has nothing to do with the fourth floor.

Q. Did you observe, what he did?

A. He did nothing, that is, except talk to Sabota, and as I passed him I looked over his shoulder and I recognized the sheets as the sheets that were being signed through the plant.

Q. Were the sheets that Bennett had like Board's exhibit 7, if you remember (handing Board's exhibit 7 to the witness)?

A. I didn't read it, and I couldn't read it, but it was just exactly the same—had the same amount of printing at the top.

Q. Did you observe whether Bennett had more than one sheet?

A. He had a sheaf of them, and I noticed that on the top.

Q. During your work did you observe any other employee going among fellow employees with any papers about the association?

A. I did.

Q. Who?

A. Hilda Smith.

Q. Who is she, or who was she; at that time?

A. She worked in the bottling department. I didn't know her job.

Q. What did you observe that she did?

A. I first noticed—When I first noticed her that day, this [fol. 489] about a week or two, about a week after our first meeting that the A. F. of L. held in the James Street hall, I observed her talking to Rose, I don't know her last name,

on the second floor, and also Mike Sabota. I didn't overhear the conversation, because it just passed back and forth.

On my next trip back, that was two or three minutes later, I observed her taking a girl from the shaker to the next aisle and talking to her. I called another fellow's attention to it, and he went over and talked to them.

Then, on my return trip back, I went over myself, that is, in the course of my work, and I asked the girl that Hilda had with her at the time, "Is she trying to sign you up with the company union?"

This girl said, "Yes."

I said, "She can't do that; you can sign, or not. It's up to you." And Hilda Smith said the same thing, "Well, its up to you. If she wants to, she can do it."

Q. Did this occur after your conversation with Greenier?

A. That was after.

Q. About how long?

A. I would say a week.

Q. Following that occasion, Hilda Smith—Following this Hilda Smith incident, did you attend any meetings of the association?

A. I attended their first meeting they held at Carnegie Hall.

Q. Have you attended any meetings besides that?

A. None.

Q. Who did you observe in charge of the meeting at Carnegie Hall?

A. I. C. Bennett opened the meeting and turned it over to Mr. McDonald, and, also, in the audience, Mr. Greenier and Mr. Capan, who are straw bosses in the branch-house department.

Q. You were out in strike, were you not?

A. I was.

Q. The strike I think the testimony shows, occurred May 24th of this year.

A. That's right.

Mr. Kleeb: If the Trial Examiner please, I would like at this time to offer a full-page advertisement of the H. J. Heinz Company which appeared in the Pittsburgh Post-Gazette, a daily morning newspaper of the city of Pittsburgh, and vicinity, the issue of Saturday, May 29, 1937. It's an ad addressed to the employees of the H. J. Heinz [fol. 490] Company, and it pertains to the strike and the

employer-employee relationship at the company, and Mr. Reed has intimated no objection to the offer.

Trial Examiner Walsh: It may be received.

(Thereupon the document above referred to was marked as Board's Exhibit No. 14 and received in evidence.)

(Thereupon a document was marked as Exhibit No. 15 for identification.)

Mr. Kleeb: If the Trial Examiner please, I would like at this time to offer in evidence as Board's exhibit 15 three mimeographed sheets, which consist of a statement to employees by the H. J. Heinz Company, dated June 1, 1937, and it was sent by the company during the strike by mail to all the employees of the company, which I think Mr. Reed will agree.

Mr. Reed: That's right.

Mr. Kleeb: And there is no objection, sir?

Mr. Reed: No.

Trial Examiner Walsh: It may be admitted.

(Thereupon the document heretofore marked as "Board's Exhibit No. 15" for identification was received in evidence.)

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. When you refer to a straw boss you mean a man who is paid on an hourly basis, but some of his duties are supervisory; is that it?

A. Almost.

Q. He doesn't discharge anybody, but he can complain about them to the foreman; is that right?

A. Some can and some can't.

Q. You mean some cannot discharge or some cannot complain.

A. Some can't.

Q. Can discharge, of the straw bosses?

A. Mr. Capan is classed as a straw boss, but, nevertheless, he has the power to discharge.

Q. Do you know of any discharges he has made?

A. No. But Mr. Braun, foreman, made the remark, "If [fol. 491] Capan sees fit to fire anybody, it is all right with me."

Q. When did he say that?
A. About two years ago.
Q. Two years ago?
A. Exactly.
Q. Do you know Mr. C. O. Harris, in the can-making department?
A. No, I don't.
Q. These men that you mentioned, Mr. Greenier, for example, as the same type, he is the same type of employee as you refer to as being a straw boss?
A. That's right.
Q. That is, part of the time he is working and part of the time he is supervising?
A. That's right.
Q. He is on an hourly basis?
A. That's right.
Q. Those men are eligible to belong to your union, aren't they?
A. I don't know, exactly. If they are bosses, they aren't eligible.
Q. But you don't regard a straw boss as ineligible for your union? You know that, don't you?
A. Depends on just what kind of a straw boss.
Q. Who determines that?
A. I imagine the executive board.
Q. The executive board of the union?
A. That's right.
Q. The men you refer to as straw bosses were all permitted to vote in the election, Greenier and Bennett and Capan?
A. Capan was not permitted.
Q. Capan was not permitted?
A. He was not.
Q. Who forbid him?
A. He told me that himself, but I don't know who forbid him.
Q. Was Gerhard—Do you know Fred Gerhard?
A. No.
Q. After all, whether or not these were bosses depends on somebody's decision as to whether or not they are executives or whether they are workers?
A. That's right.
Q. And you are just giving your opinion that these were bosses that were interferring with the election?

[fol. 492] A. It is not my opinion. If they are given power to direct our duties from the time we punch in to the time we punch out they are bosses regardless whether they work themselves.

Q. Then you say they are not eligible for membership in a labor organization?

A. I say they are.

Q. They are?

A. Everybody is eligible.

Q. Then there is no impropriety in their trying to get members for their own organization, is there?

A. It depends on the type of organization.

Q. You know pretty well what was going on in the union at that time; you were active, weren't you?

A. To a certain extent.

Q. And you know that the Union officials went to Mr. Riley and complained that some of these straw bosses and some of these foremen were helping the association, don't you?

A. Yes.

Q. And Mr. Riley called a meeting of all the foremen, and cautioned them against that, didn't he?

A. That's right.

Q. And your union expressed itself as entirely satisfied with what he had done, didn't they?

A. Exactly.

Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. When did that occur?

A. Before the strike.

Q. When?

A. I couldn't place the date.

Q. Was it—Can you fix it as to week or month, or two days or three days?

A. I would say approximately three days before the strike, or a week.

Q. That this incident of Mr. Riley occurred?

A. Mr. Heinrich told us that Mr. Riley told him to do that.

Q. You were told it was done?

A. We were told.

Q. Did you hear the foremen being told?
A. I did not.
Q. And whether or not they were told depends on whether [fol. 493] or not Mr. Riley did as he said he did?
A. Yes.
Q. And you heard they were so told?
A. Yes.

Mr. Kleeb: That's all.

Recross examination.

By Mr. Reed:

Q. Didn't make any complaint after that, did you?
A. No, but the thing still carried on as it was, that's all.

Mr. Reed: That's all.
Mr. Kleeb: That's all.
The Witness: May I have a little additional testimony?
Mr. Kleeb: If you have other facts to say, why, go ahead and tell us.
The Witness: It's a fact. There is something on that 12 exhibit John Koontz had. There is a little controversy about being passed to employees coming out of the plant. I don't know, it may be the same one or it may not be.

Redirect examination.

By Mr. Kleeb:

Q. I will hand you Board's exhibit 12. Is that the one you are thinking about and talking about?
A. It is not. This one referred to the association. This was passed out by the association.

Trial Examiner Walsh: What was it?
Mr. Kleeb: The witness refers to the one on which you reserved ruling.

By Mr. Kle-b:

Q. I show you Board's exhibit 10 for identification. Is that the paper to which you are referring?
A. That is it. This was passed to me while I was going into the plant, and the man was standing on the step; not on the first but on the second, in fact; right next to the door, and I took a sheet and went into the plant.

Mr. Kleeb: Of course, with that additional statement the offer is renewed subject to the reservation of the Trial Examiner.

Are you through, Mr. Reed?

Mr. Reed: Yes.

[fol. 494] Mr. Kleeb: That's all.

Trial Examiner Walsh: We stand adjourned until 10 o'clock tomorrow morning.

(Witness excused.)

(Thereupon, at 4:30 o'clock p. m., Tuesday, November 16, 1937, the hearing was adjourned to tomorrow, Wednesday, November 17, 1937, at 10 o'clock a. m.).

The hearing in the above-entitled matter was resumed, pursuant to adjournment on yesterday, at 10 o'clock a. m.

Before J. Raymond Walsh, Trial Examiner.

Appearances:

Robert H. Kleeb on behalf of the National Labor Relations Board.

Earl F. Reed, Esq., Donald W. Ebbert, Esq., and R. G. Bostwick, Esq., of the firm of Throp, Bostwick, Reed, and Armstrong, 2812 Grant Building, Pittsburgh, Pennsylvania, on behalf of the respondent.

Proceedings

Trial Examiner Walsh: Gentlemen, the hearings will come to order.

Mr. Kleeb: Frank Markus.

Frank Markus, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Frank Markus?

A. Yes, sir.

Q. You live at 1148 Voskamp Street, Pittsburgh, Pennsylvania?

A. Yes.

Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?

A. Yes, sir.

Q. Speak out loud so everybody can hear you.

A. Yes, sir.

Q. About how long have you been employed there, Mr. [fol. 495] Markus?

A. About four years?

Q. What department?

A. Paint department.

Q. Who is your foreman?

A. Alex Schultz.

Q. Were you ever questioned by Mr. Schultz regarding your joining the Heinz Employees Association?

A. Yes, sir.

Q. Will you state what he said and when he said it?

A. Well, it was in March, but I couldn't remember the date.

Q. What month?

A. March.

Q. What year?

A. 1937.

Q. Go ahead.

A. And he come up to me, he said, "Certain person been around with a paper," and then he wanted to know why I didn't sign it.

I said, "I couldn't sign in two places. I did sign on the outside."

Q. What did he say?

A. He said, "Probably, some of these days you might lose your job on account of that."

Q. Did he ask you to sign?

A. He didn't—he just said a certain person went around with a paper. He didn't told me to sign. He said, "Certain person went around with a paper, and why didn't you sign that paper?"

Q. Had anybody been to see you about signing the paper?

A. Cooney Moore.

Q. K-o-o-n-e-y Moore, is that?

A. I think it's C.

Q. Did you see the paper Mr. Moore had?

A. Yes.

Q. I hand you a paper which is Board's exhibit 7. Will you look at it, please, and see if that's the kind of paper Mr. Moore showed you?

A. Not this kind of paper. He had just a plain paper with the names on it.

Q. No typewriting on it?

A. No typewriting on it.

[fol. 496] Q. Was it during working hours when he asked you to sign?

A. Yes, sir.

Q. Did you observe him asking other men to sign the paper?

A. I didn't see him.

Q. Did you sign it?

A. No, I did not sign it. I said, "I couldn't sign in two places, Cooney."

Q. Did Cooney Moore give you any—Did he tell you what the paper was for?

A. Yes.

Q. What did he tell you the paper was for?

A. He said it was for the inside union.

Q. Was it after this occurred Mr. Schultz talked to you about signing?

A. No, it was a couple days later.

Q. It was after that?

A. After that, yes.

Q. Can you place when this occurred, that is, with reference to the strike; how soon before the strike? I mean, how long before the strike occurred were you approached?

A. I don't remember. All I know, that was in March when Mr. Schultz come up to me one morning and he said, "Certain person come around with the paper."

And I said, "The heck with it, I am not going to sign it." And the way I said before, I said, "Well, I couldn't sign in two places."

Q. Is that all Mr. Schultz said?

A. Yes, sir. He said, "On account of that you might lose your job some of these days."

Q. Did anybody approach you after that about the association?

A. No, sir.

Mr. Kleeb: Cross-examine.

Cross-examination.

By Mr. Reed:

Q. You are quite certain that that's in March, are you?
A. It was in March, yes.
[fol. 497] Q. You have got a notebook there.
A. This ain't the book. I just got Cooney Moore's name in here, that's all.
Q. Just the name?
A. Just the name, that's all.
Q. You don't have the date in that book?
A. No date.
Q. Did you know this Cooney Moore?
A. Yes, sir, I do.
Q. What did you have to write his name down for?
A. Because I got initials here; C. E. Moore, or C. K. Moore, something like that.
Q. When did you write his name down in that book?
A. Just the other day.
Q. That was before this trial?
A. Just the other day.
Q. Just a few days ago?
A. Yes.
Q. And wh told you his name, then?
A. I found it in the paint shop, in the list.
Q. In a list of employees?
A. Yes.
Q. And you copied down his name in that book?
A. Just his initials, yes.
Q. You knew Moore all the time, didn't you?
A. Sure, I always know him, Cooney Moore, but his initials in between that.
Q. You are sure this was in March?
A. In March.
Q. And there wasn't anything on this paper, just a plain sheet of paper?
A. Just a plain sheet, names on it.
Q. You know there was no list being circulated for the association at all, don't you?
A. That is the month this happened.
Q. You had a good deal of trouble with Schultz, haven't you? He complained about you a number of times?
A. No, sir.

Q. He complained about you for your chewing tobacco a number of times while you were working?

A. He did, yes.

Q. That is forbidden in the Heinz plant, isn't it?

A. Yes.

Q. You had a number of controversies with Schultz, didn't [fol. 498] you, over the period of time you worked there?

A. Yes, we did.

Q. And when Schultz told you you might be without a job, he wasn't talking about union at all, he was talking about your chewing tobacco, wasn't he?

A. No, he was talking about this paper.

Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. Mr. Markus, you recall the strike in May of this year, the 24th of May?

A. Yes.

Q. The month of March would be about two months before the strike.

A. Yes.

Q. Was it two months before the strike Schultz came to you with this paper?

A. Something like that.

Mr. Reed: You are cross-examining your witness. He has positively stated several times it was March.

Trial Examiner Walsh: Objection sustained.

Mr. Kleeb: That's all.

(Witness excused.)

Mr. Kleeb: Harry Bodnar.

Harry Bodnar, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Harry Bodnar?

A. Yes, sir.

Q. You live at 1413 Stadman Street?
A. Yes.
Q. That's North Side, Pittsburgh?
A. Yes.
Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. Yes, sir.
Q. Speak out loud.
A. All right.
Q. About how long have you been employed there?
A. About eighteen years, or I think it's about nineteen years, now.
[fol. 499] Q. About nineteen years. What work do you do?
A. Oh, I work outside. About seven or eight years I work outside on the trailer, labor.
Q. A laborer?
A. Yes.
Q. Do you recall the strike in May of this year at the plant? Do you remember the strike?
A. Yes.
Q. What work were you doing at that time? What department were you in?
A. Storage department.
Q. Storage department?
A. Storage department, yes.
Q. Were you ever asked by any official or boss to join the Heinz Employees Association?
A. Mr. Hayes, he followed me about three days straight, one week before the strike.
Q. Mr. Hayes did what?
A. About three days he followed me. Monday morning he said—stopped me on the front, on the front time office—he said, "You join the union?"
I said, "I join for no place, yet."
And he said, "What's the matter you no join it?"
I said, "I have got lots of time yet."
He said, "You have to."
I said, "I have got lots of time yet."
He said, "No, you have to. There is a new rule now."
Q. H- said there was a new rule?
A. He said, "There is a new rule."
Q. What union——

A. He said, "You work pret-y long over here for the company. Company treat you right. You have to sign for the inside."

I said, "I don't know what I sign. I don't know myself. Maybe I sign outside and maybe inside, maybe I lose my job."

He said, "No, if you sign inside you no lose your job. If you sign outside you are going to be thrown off."

Q. Was that Oscar Hayes?

A. That is Hayes. Mr. Hayes told me that time, and next day same thing started to me. He said, "You forget yesterday I told you." I say, "I no forget it." He said, "Well, you no have to wait. You have to sign now." I say, "No, I going to wait some more."

Even third day he jumped to me twice in the morning and afternoon. I no what he mean. He is afternoon jump to [fol. 500] me, you know, said, "Who is your friend?" I say—I don't know what going to say to him, you know. He jumped to me too mad. I don't know he is want to fight with me. I don't know myself. I say, "Well, is my friend, my friend if I work is my friend: if I no work nobody my friend. For that time he say, "That is all right, you have to change your mind." I say, "Well, my mind all the time like that same thing."

Q. Did Hayes have a paper for you to sign?

A. No, he no have no paper.

Q. Did anybody come to you at that time or before that time and ask you to sign a paper, show you a paper?

A. Nobody showed to me paper, just he said I have to sign this. He told me like that, you know. He no show to me paper, just to say I have to sign. I say, "No, but I have to me. I got lots of time yet."

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. You didn't work for Hayes, did you?

A. I work for the company, and Hayes three days pretty near follow for me three days. He is follow me Monday, Tuesday, Wednesday.

Q. Did he follow you around for three days?

A. For three days.

Q. You were driving this trailer?

A. Yes, sir.

Q. Did anybody ever talk to you about not bothering the men as you went about your work and not talking to the men?

A. No, working time nobody say nothing, just I come to work. You know, he is tell to me on the front time office.

Q. Well, you worked for Weinman when you worked in the storage, didn't you?

A. Yes, ma'am.

Q. And didn't Mr. Weinman talk to you several times about annoying the men as you went about your work?

A. No, my boss no say nothing to me.

Q. Didn't say anything to you about it?

A. No.

Q. Now, Hayes never presented you with a paper, but he said you had to sign something?

A. He have no paper, just he say to me, "You have [fol. 501] to sign." I say, "No, I no have to sign if I no want it." He say, "You have to. It is new rule like that now."

Q. He said what?

A. He said, "New rule."

Q. New rule, you having to sign?

A. He say, "You have to sign now." I say, "No, I going to wait for a while." He says, "Oh, you want to wait?" I say, "Sure, I going to wait."

Q. You don't understand English very well, do you?

A. I no understand pretty good.

Q. You were born in Russia?

A. Yes, sir.

Q. Are you a citizen?

A. Not now.

Mr. Kleeb: I object, it is immaterial.

Trial Examiner Walsh: Overruled. I beg your pardon. Sustained.

By Mr. Reed:

Q. You might have misunderstood Mr. Hayes, don't you think?

A. I don't catch that?

Q. He never offered you any paper to sign of any kind?

A. No, I no sign.

Q. He didn't tell you any place to go to sign the paper?

A. He no say nothing where I have to go sign a paper. He just say, "You have to sign." I say, " I no want. I no sign it yet. I going to wait for after on the last."

Q. And nobody had ever asked you to sign a paper for the association before that, had they?

A. No.

Q. And nobody asked you afterwards, did they?

A. Nobody say nothing to me. Mr. Hayes told me that last before strike, that is all I have.

Q. None of these men who belonged to the associations asked you to sign, did they?

A. No, nobody tell me. Everybody know that what I no going to sign it.

Q. But there was nobody aside from Mr. Hayes ever asked you to sign anything?

A. No.

Mr. Reed: That is all.

[fol. 502] Redirect examination.

By Mr. Kleeb:

Q. Did you at that time, when Mr. Hayes talked with you, know anything about a paper being signed in the department or about the factory?

A. No.

O. Had you heard of any paper going around?

A. I hear before a couple of weeks already is paper all around in the factory.

Q. When Mr. Hayes——

A. Nobody say nothing to me.

Q. When Mr. Hayes talked to you, you knew there was a paper going around the plant, did you?

A. No.

Q. Did you know of any paper?

A. Mr. Hayes no say nothing for paper, you know, is around in factory. Just I see lots of fellows, you know that paper to me, you know.

Q You don't understand me.

Did you know—I mean, had you heard that there was a paper going around the plant?

A. Yes, sir.

Mr. Kleeb: That is all.
Trial Examiner Walsh: That is all.

(Witness excused.)

Mr. Kleeb: Walter Alinsky.

WALTER ALINSKY, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Walter Alinsky?
A. Yes, sir.
Q. You live at 1204 Voscamp Street, Pittsburgh, Pennsylvania?
A. Yes, sir.
Q. Are you now employed at the Pittsburgh Plant of the H. J. Heinz Company?
A. Yes, sir.
Q. How long have you been employed there, approximately?
A. About eight years and five months.
Q. In what department do you work?
A. B. G. Sterilizer.
Q. What is the nature of your work?
[fol. 503] A. Well, we sterilize all the finished products and canned goods.
Q. Is that near the can making department?
A. I would say that is about—well, the can making is in the next building on the sixth floor.
Q. The next building?
A. In the next building on the sixth floor.
Q. Were you working at the plant about the third week in April of this year?
A. Yes, sir.
D. Do you recall anything unusual occurring at that time during your working hours?
A. Well, I was approached once by some Bennett come down and was asking for me, but I was for my lunch. That is I. C. Bennett. I was for my lunch, so the fellows told

me he wanted to see me. I went up the same day, and he told me he wanted to talk*ed* to me. I told him I didn't have much time.

Q. Where were you when he talked to you?

A. Well, I was back from my lunch.

Q. At work?

A. At work.

Q. Were you approached by Mr. Bennett at work?

A. Yes, sir.

Q. And tell us what he said to you at that time?

A. He just told me he wanted to talk to me. I told him, "I don't have much time now." So he told me if I could see him, so I told him I could see him next morning.

Q. Did you fix the time?

A. I fixed the time. It was 7:30 in the morning I came up to see him.

Q. Was that before working hours?

A. That was before working hours.

Q. About how long before working hours?

A. I would say about a half an hour.

Q. Where did you see Mr. Bennett?

A. I seen him in the can room?

Q. Now, tell us what took place?

A. Well, Bennett was telling me about all the loyal employees that are forming an association, a union of some kind, and he told me, he showed me his union card that he belonged to the union, and he told me, "The other unions won't do you any good."

Q. What kind of a union card did he show you?

[fol. 504] A. He showed me a boiler maker's union card, a withdrawal card from the boiler maker's union.

Trial Examiner Walsh: What kind of a union was that?

Mr. Kleeb: Boiler maker's.

By Mr. Kleeb:

Q. Do you know whether that was an A. F. of L. Union?

A. It was an A. F. of L. Union.

Q. What did he say about that card?

A. Well, he told me——

Q. If anything?

A. He told me he was the president of that union once, because his name was signed on the union card.

Q. Did he say anything about that union?

A. Well, he didn't say much about the union but he told me, "You know how the unions are." See? "They won't do you much good unless it is a union that will be right with the employees, for the employees, for the benefit of the employees."

Q. What else did he say at that time?

A. I asked him who is at the head of the union. So he named me the fellows.

Q. Heads of what union?

A. Head of the Heinz Employees Association.

Q. And did he tell you?

A. He told me the names of the fellows.

Q. Can you state the names that he told you who were at the head of the association?

A. He told me this John Ubrey.

Q. John Ubrey?

A. Yes, and Buck Ubrey. I don't know Buck's first name, and he told me that Eddie from the glass room.

Q. Who?

A. Eddie from the glass room; I don't know his name, the last name, but I know the fellow. And he told me Frank Kirschner. I know Frank Kirschner.

Q. And did Bennett say anything about what he had to do with the association? Was he one of them?

A. Bennett told me that he is in it, too. He is one of them that started it, see? They hadn't had their regular officers then.

Q. Were they all the people he named?

A. That is all the people he named.

Q. About how old a man is Frank Kirschner? Do you know? Is he a young fellow?

A. Frank Kirschner, I would say he is about from [fol. 505] 55, about 55, 56 years old; close to it, anyhow.

Q. Do you know what department he is in?

A. Right now he is a mechanic for all the glass machines and labeling machines.

Q. Do you know the two Ubreys?

A. Yes, sir.

Q. About how old is Buck Ubrey?

A. Buck Ubrey is about 50, close to 50.

Q. And John Ubrey, what would you estimate his age to be?

A. 52, 53.

Q. Do you know whether Buck and John are related?

A. I don't know that.

Q. This Eddie that you referred to, do you know what job he had at that time?

A. He was over in the glass-testing department. I think he fixed scales, and he used to come around and get glass once in a while, take these bottles down in the testing department.

Q. Do you know whether or not Eddie's work, the work he was doing at that time, would take him over the factory, or would he work in one spot; do you know that?

A. It would take him over the factory, on account of some of the scales he would work on.

Q. And Bennett, did you know at that time who Bennett was?

A. I knowed Bennett.

Q. What did he do?

A. Bennett was up in the shearing department, up there.

Q. What business, if any, do you know that Bennett had in your department, the first time he came to you? What would he have to do with you?

A. He didn't have no business there, except he might have walked through it going to the locker room, or something; that is about all.

Mr. Kleeb: Cross examine.

Cross-examination:

By Mr. Reed:

Q. What kind of work did Bennett do?

A. Bennett? Well, as far as I know, Bennett, the only thing Bennett did up there was what I heard from other [fol. 506] people who worked up in that department.

Q. I see. You don't know?

A. I don't know. I haven't worked up there.

Mr. Reed: That is all.

Mr. Kleeb: That is all.

Mr. Reed: Wait.

By Mr. Reed:

Q. You are treasurer of the union, are you?

A. Yes, sir.

(Witness excused.)

Mr. Kleeb: Andrew Babi.

ANDREW BABI, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Andrew Babi?
A. Yes, sir.
Q. You live at 1517 Eckert Street?
A. Yes, sir.
Q. That is the North Side, Pittsburgh?
A. Yes, sir.
Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. Yes, sir.
Q. About how long have you been employed there?
A. I would say about 13 or 14 months.
Q. In what department do you work?
A. Local shipping.
Q. Is that a division of the shipping department?
A. No, it is a department in itself.
Q. What is meant by local shipping?
A. Well, that is products that are shipped within 150-mile radius in Pittsburgh.
Q. While you were at work were you ever asked to join the Heinz Employees Association?
A. I was.
Q. When?
A. Well, about two weeks before the strike, there was a piece of paper was sent around, and it had one name on there, and that was the timekeeper's name.
Q. How do you mean, the paper was sent around?
A. Well it was handed to one of the follows who had [fol. 507] charge of the city room at that time, and he, in turn, took it to everyone that was in the department there and asked them to sign.
Q. I show you Board's exhibit 7. Will you look at it and state if that is the kind of a paper that you are referring to that was passed around?
A. This is an exact duplicate.
Q. Who was your boss at that time?
A. Mr. Briggs.

Q. Briggs?

A. Yes, sir.

Q. I believe you stated that when it was first started around, this paper was first started around, there was one signature on it?

A. Louis Murphey.

Q. Who was Louis Murphey at that time?

A. He was the timekeeper there.

Q. Just what were the mechanics of passing this around? I mean, how was it done?

A. Well, he came out and gave it to this fellow.

Q. Who did?

A. Murphey gave it to Frank Lewandowski. He had charge of the city room at that time. He gave this slip of paper to him, and this fellow took it around to each fellow individually and asked them to sign.

Q. Who is this fellow that took it around?

A. Frank Lewandowski.

Q. Do you know how to spell that?

A. No, I couldn't spell it.

Q. And what was that man's job at that time?

A. He had charge of the city room there.

Q. What room?

A. City room. That is where we take care of broken cases.

Q. The city?

A. City.

Q. Did Frank approach you with a paper like Board's exhibit 7?

A. He did.

Q. What did he say to you?

A. He asked me what I wanted to sign, and I asked him what it was for, and he told me he didn't know anything about it either.

Q. Was this while you were at work?

A. This was during working hours.

Q. When was this with reference to the strike?

[fol. 508] A. Oh, I would say about two weeks before the strike.

Q. And your boss was Briggs?

A. Briggs.

Q. Was Briggs around when this was being done?

A. Well, I think he was in the office. He wasn't out on the floor, though.

Q. Is it customary for petitions and papers to be circulated during working hours since you have been working at the plant?

A. No, sir.

Q. Was this, as far as you know, an unusual thing?

A. It was an unusual thing to me, yes sir.

Q. When Frank asked you to sign this paper, did you sign?

A. No, sir.

Q. Did you sign later?

A. I did, after we were called in the office one at a time by the timekeeper.

Q. Explain when that happened and what occurred.

A. Well, when they didn't have any luck in getting us to sign this petition, we were called, right after the bosses went to lunch, about 10 minutes after 12, we were called individually into the office and asked to sign. I didn't sign at first until everybody had signed, when the word started circulating around that we would be better off if we did sign.

Q. Who was in this office when you went there?

A. Louis Murphey.

Q. And at that time you say he was the timekeeper?

A. He was the timekeeper.

Q. Was it his office?

A. He was in there. That is where he worked, right in there.

Q. When you went in, was anyone else in there but the two of you?

A. No, there was another fellow that came in with me.

Q. How did your know that they were in the office?

A. That is always understood, that that was his office.

Q. No. How did you know you were to go to see Murphey?

A. He, in turn,—He would call one fellow, and, after he talked to this fellow, this fellow came out and would tell you to go in there.

[fol. 509] Q. I see. When you went in, was Murphey sitting or standing?

A. He was sitting.

Q. Now, what did he say?

A. Oh, I can't possibly recall the exact—

Q. If you recollect.

A. —the exact words, but he just asked us to sign this paper. We asked him what it was for, and he wouldn't even

tell us what it was for. He says, "You can read." He says, "Draw your own conclusions to it."

Q. Did you sign the first time you went into Murphey's office?

A. No, sir.

Q. Did you go back in again?

A. I went back in again, yes, sir.

Q. The second time you went in were you called in or did you go in voluntarily?

A. We went in voluntarily, after everybody had signed, and then we went in.

Q. Why did you sign?

A. We figured we would be better off if we signed.

Q. What do you mean, you figured you would be better off if you would sign?

A. The rumor started going around that all of these fellows would come to us and say—one fellow came up there to us and said, "Babi," he says, "if you don't sign, you are crazy." He says, "You are better off if you do sign, and you will have a little job a little better. You will be better off, too."

Mr. Kleeb: Cross-examine.

Cross-examination.

By Mr. Reed:

Q. This Frank Lewandowski that handed you the paper, he was an hourly employee, wasn't he?

A. Yes, sir.

Q. And Louis Murphey, the timekeeper, was an hourly employee?

A. Yes, sir.

Q. And he just had his desk in the office?

A. Yes, sir.

Q. And the time he was calling you men in was the lunch hour, when Mr. Briggs wasn't there?

A. Yes, sir.

Q. Now, Louis Murphey belonged to this association, [fol. 510] didn't he?

A. All he had was his name on that slip of paper.

Q. You know that he was very active in the Heinz Employees Association?

A. Well, I don't know. I didn't pay very much attention to that.

Q. Well, he was the one that was pushing the thing to get names in your department, wasn't he?

A. He was.

Q. And he has since been discharged by the company, hasn't he?

A. Yes, sir.

Q. So he is not there now?

A. No, sir.

Q. When was he discharged?

A. I would say about two or three months ago.

Q. Well, not very long afte the election?

A. No, not very long after the election.

Q. I mean, it was a short while after the election he was discharged?

A. Oh, no, no. It has been about three months after the election, three or four months after the election.

Q. Now, in that department, you men have intervals between trucks when you have time to sit around and talk, don't you?

A. No, sir.

Q. Isn't there a period between loadings when the men stand around and talk?

A. No, sir.

Q. Work all the time?

A. Yes, sir.

Q. Truck there to load all the time, is there?

A. We don't only load trucks, we fill out orders and when we get what we call loads and we get in what we call a hole where stock is piled away, we, in turn, work on that and check that and something doing all the time.

Q. As far as you know, Mr. Briggs never saw any of this going in?

A. As far as I know, no sir.

Q. How many men were there in that department?

A. I would say about 20 to 22.

Mr. Reed: That's all.

Trial Examiner Walsh: Just a moment, are you through?

Mr. Kleeb: Yes, sir.

[fol. 511] By Trial Examiner Walsh:

Q. When you say that this Frank Lewandowski was in charge of the city room, what do you mean?

A. It was up to him to see all these orders were packed correctly first when the orders came in, to make sure they were packed and his job was to check them and see everything got along smoothly in there.

Q. Suppose everything doesn't go along smoothly?

A. He gets the blame for it.

Q. From whom?

A. From the boss, Mr. Briggs.

Q. Then what would he do?

A. I don't know what he would do. Of course, if the customer complains, he would get the complaint and give it to him.

Q. Would this Lewandowski complain to you?

A. Yes, sir, to me.

Q. Suppose he would complain to you?

A. If I was wrong I would admit it, but if I wasn't wrong, I would go up to see the boss.

Q. You don't consider Lewandowski a boss?

A. No, not in the term you call a boss.

Q. What do you consider a boss?

A. Somebody that gives orders. He gets orders that he in turn gives to somebody else.

Q. Who is the boss?

A. Mr. Briggs.

Q. He is the only boss?

A. I don't know whether you call this other gentleman Mr. Betz down there; I imagine you call him a boss too, but Mr. Briggs is the main boss.

Q. What about Louis Murphey; when he was there did you consider him a boss?

A. He was given a large amount of authority down there. He could come around and tell you what to do.

Q. Just how large? It can be interpreted rather generally.

A. The word from him to do anything was the same as from any of the bosses.

Q. The office you saw Mr. Murphey in was the office in which Mr. Briggs had his headquarters?

A. Yes, sir.

Q. Were they the only occupants of that office?

A. Yes, sir.

Q. Mr. Briggs had a desk of some kind there and so did [fol. 512] Mr. Murphey?

A. Yes, sir.

Q. So they occupied the same room as an office for headquarters?

A. Yes, sir.

Trial Examiner Walsh: That's all.

Recross Examination.

By Mr. Reed:

Q. There are two or three other desks in that office there?

A. There is three desks.

Q. Who had those other desks?

A. There is a fellow who works on—all he does is check these loads that come in there. He writes them up and bills them.

Q. None of the men consider the timekeeper as a boss, do they?

A. He had authority—any word we got from him we had to do it.

Q. He frequently passed on information but the men don't regard the timekeeper as a boss, do they?

A. They look up to him as one of the bosses.

Q. Do the men generally regard him as a boss?

A. Not generally, but in this case he was.

Q. In this case he had authority?

A. In this case he had authority.

Q. You are in charge of that room now aren't you?

A. Yes, sir.

Q. You don't consider yourself as a boss now, do you?

A. No, sir.

Q. You are doing the same thing Lewandowski did at that time?

A. Yes.

Q. What you do is report information along to Mr. Briggs?

A. Yes, and I would be to blame if anything was wrong.

Q. But you are not eligible to seek members of the union because of that job, are you?

A. I am not allowed to do it on company time.

Q. Of course; but you are a union steward, now?

A. Yes, sir.

Mr. Reed: That's all.

[fol. 513] Redirect examination.

By Mr. Kleeb:

Q. A few questions. After you signed this paper were you ever asked to sign a membership card in the association?

A. Yes, I was asked by Louis Murphey to sign. I asked him what the card was for. He said, "You are a member of the union; you sign that piece of paper." He said, "Take this membership card and give me a half a dollar."

Q. Is that a card like Board's Exhibit 8?

A. Yes, sir.

Q. Did you give him a half a dollar?

A. No, sir.

Q. Did you sign the card?

A. No, sir.

Q. Have you attended any of the association meetings?

A. No, sir.

Q. Where were you when you were asked to sign this card?

A. Right in doing the work.

Q. Murphey come up to you?

A. Murphey come up to me, yes.

Mr. Kleeb: That's all.

Witness excused.

Mr. Kleeb: Frank Sukits.

Frank Sukits, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Mr. Frank Sukits?

A. Yes, sir.

Q. And you live at 1277 Voscamp Street?

A. Yes, sir.

Q. North Side, Pittsburgh?

A. Yes, sir.

Q. Are you now employed at the Pittsburgh Plant of the H. J. Heinz Company?

A. Yes, sir.

Q. About how long have you been employed there?

A. Oh, a year and four months.

Q. Who is in charge of that—for what department are [fol. 514] you in, rather?

A. Branch house stock.

Q. And who is in charge of that department?

A. Charlie Braun.

Q. Is that Charles A. Braun, Jr.?

A. Yes, that's right.

Q. Are there any divisions of that department?

A. No, branch house is alone, like just stock.

Q. Who is your immediate boss, that is the next one above you?

A. Capan.

Q. What is his first name?

A. Frank.

Q. Is that C-a-p-a-n?

A. Yes.

Q. What is your job?

A. My job is to stack loads, put away cases.

Q. Did you ever discuss unions with any of your bosses?

A. Well, Braun was—he come over, it was after the noon hour, after 1 o'clock, he come over to the other side of the building, the cereal, and me and two other fellows there and he approached us and was talking to us.

Q. When did this occur, about when, with reference to the strike?

A. Oh, a month or two months before the strike.

Q. Do you recall who the other two fellows were?

A. Lawrence Rom and Fred Maitz.

Q. Will you relate as best you can recollect what was said by Braun or what was said in general, at that time?

A. Well, he come over and he says that he hear there is an outside union going on and he said that we was with the —or that we wasn't with the company long enough to know the benefits that's, you know, given to the employees and that we weren't there and we weren't old enough to know what an outside union could do for us and that kind, as much as that we shouldn't bother with this and he told us the company could make us go out on the street and eat, too, instead of the dining room.

Q. Was his conversation for or against outside unions, as you can recollect?

A. Against the outside unions.

Q. Do you remember any specific thing he said against the outside unions?

[fol. 515] A. Well, he says definitely that they wouldn't give us more than sixty cents an hour.

Q. What were you making at that time?

A. Oh, I don't know, I guess about 52½ cents, or something like that.

Q. And how long had you been with the company.

A. A year and four months.

Q. This conversation of Braun's with you three men took about how much time?

A. I would say between a half to three-quarters of an hour.

Q. Would you have been working had he not been talking to you?

A. Yes, we would have been working if he wouldn't have been talking to us.

Q. Were you ever approached to sign a paper for the Heinz Employees Association?

A. No, they never bothered me with it.

Mr. Kleeb: Cross-examine.

Cross-examination.

By Mr. Reed:

Q. When did this conversation take place with Braun?

A. Well, about a month or two before the strike.

Q. That is, before there was any solicitation for the association at all, wasn't it?

A. Yes.

Q. Before they started to take names for the association?

A. Yes, sir.

Q. So that it was just a general discussion about what the Heinz employes had and what they might get out of a union, wasn't it?

A. Yes.

Q. And he pointed out the things that the Heinz Company did for its employees that they weren't required to do, didn't he?

A. How do you mean?

Q. He pointed out they maintained this dining room, and things of that kind.

A. All right. It was built for the employees.

Q. How is that?

A. It was built for the employees, wasn't it?

Q. That's what he was talking about; he said that——

A. He said if the outside union get in they would make us go out on the street to eat.

[fol. 516] Q. He said if the outside union came in they wouldn't run the dining room, didn't he?

A. They would make us go out in the street.

Q. You still eat in the dining room?

A. That's right. All right.

Q. He said if an outside union got in there they wouldn't run the dining room, didn't he?

A. He didn't say. He just said they would make us go out in the street and eat. I didn't say whether they would or wouldn't run the dining room.

Q. You had some trouble later, and were discharged?

A. Yes.

Q. And through the grievance committee you took it up with Mr. Riley and you were restored?

A. Yes.

Q. Do you have any hard feelings with Mr. Braun?

A. Not personally, but as a factory.

Q. You didn't think that conversation that occurred before they were organizing an association at all was intended to coerce or threaten you, or anything of that kind?

A. Just whatever I say, you can take what you want out of it.

Q. There was a lot of union talk going around the mill all the time, wasn't there, at that time?

A. Yes.

Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. Where were you eating your lunch?

A. I brought my lunch and ate at the plant.

Q. Does the company provide a room for the employees to eat?

A. Yes, sir.

Q. Had you been doing that for some time?
A. All the time.

Mr. Kleeb: That's all.
Trial Examiner Walsh: Just a minute, Mr. Sukits.

Examination.

By Trial Examiner Walsh:

Q. The conversation that you had with Braun, you say, was a month or two months before the strike. There is con- [fol. 517] siderable difference. It might have been two months, might it?
A. It's closer to two months than one month.
Q. Then it might possibly have been in late March, because the strike was in late May; is that right?
A. Yes.
Q. In your cross examination you were asked something like this: Then this conversation with Braun was before they were soliciting names for the association?
A. Yes.
Q. You answered "Yes." How do you know it was?
A. What do you mean?
Q. How do you know it was before they solicited names for the association?
A. How do I know? I know, that's all.
Q. Were you ever solicited for membership in the association?
A. No, sir, I never went around soliciting.
Q. Then it couldn't have been afterwards, in your case, because you had never been solicited?
A. No, there was nothing about an inside employees' association at that time.
Q. How do you know it?
A. Because I never heard of it.
Q. You never heard it?
A. No.
Q. Then there might have been some?
A. There might be and there might not.
Q. As far as you know, there wasn't?
A. No.
Q. As far as you know, when did the employees' association commence?
A. About three or four weeks before the strike, it come in full, that the Heinz Association started the drive.

Q. How do you know about it?

A. I seen different guys going around with papers.

Q. How did you know it had anything to do with the association?

A. How do I know?

Q. How did you know?

A. Because I seen one guy when I was working, I believe it was during the time when the last flood came up, where the water was around 33, 34, or 35 feet, there was a fellow from the third floor, the floor above my department, was going around with a piece of paper, and all the fellows was [fol. 518] moving flood stock, to join up.

Q. Did they tell you that?

A. Who told me that?

Q. The fellows.

A. No, nobody told me that; I seen it.

Q. I find it a little difficult to understand how you knew what it was all about if they didn't approach you.

A. They didn't approach me because I was for the outside organization all the time.

Q. You don't know, actually, what they were doing?

A. Sure. I know what they were doing and I seen the papers.

Q. Did you see the papers?

A. Sure.

Q. I thought you weren't presented.

A. I seen the guys writing.

Q. This occurred after the conversation with Braun?

A. Yes.

Q. It never occurred, in any instance, before your conversation with Braun?

A. No.

Trial Examiner Walsh: All right.

Mr. Kleeb: That's all.

(Witness excused.)

Mr. Kleeb: John Martof.

JOHN F. MARTOF, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are John F. Martof?

A. Yes, sir.

Q. You live at 5208 Natrona Way, Lawrenceville, Pennsylvania?

A. Lawrenceville.

Q. Is that Lawrenceville or Pittsburgh?

A. That's Lawrenceville, Pittsburgh.

Q. Lawrenceville, Pittsburgh, Pennsylvania; not North Side?

A. Yes.

Q. Are you now employed at the Pittsburgh Plant of the H. J. Heinz Company?

[fol. 519] A. Yes, sir.

Q. Approximately how long have you been employed there?

A. I would say about nine years.

Q. And the department?

A. Different places during that time.

Q. Prior to the strike, May 24th of this year, where were you working?

A. Bean baking.

Q. And you had been in the bean baking department for some time?

A. Oh, yes; for about a year, anyhow.

Q. Is the bean baking department in a particular building?

A. It's all on one floor. There was bean sterilizing and bean baking, bean bleaching.

Q. Is there a bean building?

A. Yes, sir, there is.

Q. And is your department in that building?

A. Yes, sir.

Q. And prior to the strike you were in the bean baking, you say?

A. Yes, sir.

Q. What kind of work were you doing at that time?

A. Well, I was working on the platform, sterilizing, pushing baskets, different jobs; working in the kitchen.

Q. And the nature of your work is sterilizing baskets?

A. No, beans.

Q. Sterilizing beans?

A. Beans, yes, sir.

Q. At that time was it?

A. I might work two days out of the week there sterilizing and then get back in the kitchen there.

Q. What do you do in the kitchen?

A. Push baskets around after they empty the beans out.

Q. Who is the boss of that department?

A. Andy Vajentic.

Q. Did your boss, Andy Vajentic ever, prior to the strike, talk to you about unions or about the Heinz Employees Association?

A. He come up there, I would say, about three weeks before the strike.

Q. Come up where?

A. On the platform, at that time where I was working.

[fol. 520] Q. Did he talk to you?

A. He talked to me about how good this inside union was.

Q. Tell us exactly, as best you recollect, what the conversation was?

A. He come up to me one day and he was going around to the other fellows telling them about it and he come up to me and started talking to me about the Heinz Employees Association. He says it would be a good idea to join and all different things. He told me I had been with the company a long time and told me how the company treated me and all that stuff like that and in the meantime he told me to go up and sign up in the—I would say up in the balcony, what I would call it, where they were bleaching beans.

Q. Did he tell you what to do up there?

A. He told me to go up there and look at the slip up there a fellow had, a fellow named John Muska had up there.

Q. Did you go where Mr. Vajentic told you to go?

A. I went up there and I looked at the slip and——

Q. Was this fellow there?

A. He was there, yes.

Q. Did you see this slip?

A. I saw the head lining of it, Heinz Employees Association.

Q. I show you Board's Exhibit 7 and ask you if that's the kind of a slip you saw?

A. It was the bottom here, but the title on the top of it.

Q. Was that wording on that paper on the paper you recall?

A. I read a few lines of it.

Q. Would you recollect whether it was like that?

A. I would say like this, but it had the title on top of it, "Heinz Employees Association".

Q. Did you have to leave your work to go up to see this fellow?

A. Yes, I did.

Q. Was anyone else present?

A. Well, at that time he was talking to me and I went up there and nobody else wasn't around.

Q. What did he say to you?

A. Well, he told me about the unions forming here, outside and inside.

Q. What did he want you to do?

[fol. 521] A. He told me that the inside union would be best.

Mr. Reed: Who is this "he" now? Is this the man upstairs or Vajentic?

Mr. Kleeb: He is talking about Muska.

The Witness: No, the boss.

Q. Was Vajentic with you?

A. No, he was down below.

Q. You did go up. I mean, when you went up?

A. The fellow upstairs didn't say a word to me. He just handed me this slip of paper and told me to sign it and that's about all he said to me.

Q. Did you sign?

A. No, I didn't.

Q. Have you ever signed up with the association?

A. No, I haven't.

Q. Were you ever asked any time again after this occasion to sign any paper?

A. Well, they was going around, going in the lunch room; heard rumors you had to sign in order to keep your job, amongst the fellows, and again Andy stopped me, I was alone on the way over to get a drink of water at the drinking fountain.

Q. Was that Andy Vajentic?
A. That was Andy Vajentic.
Q. What did he say?
A. He got to talking about the inside union.
Q. What did he say about it?
A. He said it would be a good thing to join. I told him I didn't know much about it. I told him I wouldn't sign.
Q. What did he say?
A. He said he had been in the company so long, and started to carry on, and I just walked away.
Q. What do you mean he started to carry on.
A. How long he had been with the company and how good the company treated him and all stuff like that.
Q. You stated in a previous conversation with Vajentic he told you how good the company was, to you. What did he say about that?
A. He said I had a steady job, that I was there, and he kept me on all the time during the depression.
Q. In that first conversation with Andy Vajentic, your foreman, did he say anything about outside unions to you?
A. Well, he says that, "You wouldn't want anybody to come in here and tell you how to run this business" some-
[fol. 522] thing like that.

Mr. Kleeb: Cross examine.

Cross-Examination.

By Mr. Kleeb:

Q. He didn't tell you you had to join or you would lose your job, or anything of that kind, did he?
A. He said it was a good idea to join. He said it would be safer for you.
Q. How long had you known Mr. Vajentic?
A. Oh, I knew him about five years, but I worked in his department in and out.
Q. How many men does he have in that department?
A. I wouldn't say how many men he has got there.
Q. Approximately.
A. I would say about 20.

Mr. Reed: That's all.

Redirect examination.

By Mr. Kleeb:

Q. He said it was safer to join what?

A. The inside union. I told him I didn't know much about it, and I wouldn't sign for either side.

Q. This conversation at the water fountain you referred to previously, did that occur after this other conversation?

A. No, it was before the first one, when I had to go up and sign.

Q. That was when?

A. That was before he told me to go up and sign this paper.

Q. It was following that that you had this other conversation with him, when he told you to go up and sign this paper?

A. Yes, sir.

Mr. Kleeb: That is all.

(Witness excused.)

Mr. Kleeb: Mat Canjar.

MAT CANJAR, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Mat Canjar?

[fol. 523] A. Yes, that's right.

Q. And you live at 835 Blossom Way, North Side, Pittsburgh?

A. Yes, that's right.

Q. Answer "Yes" loud, will you?

A. Yes.

Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?

A. Yes, sir.

Q. About how long have you been employed there?

A. I was nine years and six months, the past nine years, in April.

Q. In what building do you work?
A. Bean baking.
Q. In what building?
A. Bean building.
Q. In what department?
A. Bean baking.
Q. What kind of work do you do?
A. Hoist, I hoist basket from floor—before I was on first floor, I send basket from the fifth down on third and second.
Q. Let me clear this up. Prior to the basket, did you hoist?
A. Yes, nine years.
Q. For nine years you were a hoister?
A. Yes.
Q. Is that sort of a laboring job?
A. Yes, sir.
Q. And what hoist was it, before the strike?
A. That was first.
Q. And what did that work—What did you do on the first hoist?
A. On the first hoist we have two cranemen, each craneman was on one side, and one rolls on the inside and other rolls on the other side, and both cranemen bring basket and pull cans of beans. As they come down the rolls I hook them up and send them down on the third and second floor, sometimes——
Q. From the third floor?
A. From the fifth and from the third and second.
Q. That's known as the first hoist?
A. We call that first.
Q. Who is in charge of the bean-baking department?
A. That's Andy Vajentic.
Q. There has been testimony, Mr. Canjar, that the A. F. of L. outside union had a public meeting April 15th of [fol. 524] this year.
A. Yes.
Q. Did you attend that meeting?
A. Yes, I was there.
Q. Where was that meeting?
A. That was on the 15th April——
Q. No; where? What street?
A. On James Street.
Q. Was anything said to you by any boss about attending that meeting?

A. Next morning, yes, sir.

Q. Who said anything to you?

A. Andy Vajentic.

Q. What did he say?

A. Well, he said to me, "Mat, you was on that meeting last night."

I said, "Yes, sir."

Then he said, "What do you try to do? You try to organize the union?"

I said, "I guess we try."

Then he tried to talk to me, I was work there nine years, and all this depression, how that company keep me on the job and my family and, you know, there is more than this; he held me that time more than 15 or 20 minutes. Then he tried talk against outside union.

Q. What did he say?

A. He said, "Mat, you know if you organize—if they come, outside union in, you know you are going to lose your insurance." He said, "You know, you have $1,000 H. J. Heinz Company give you free insurance, and the other $1,000 you pay half, the company half." Then he said, "You going to lose Social Security."

I said, "No, I can't lose that, because this is under Government control."

Then he said, "You know, last year you have a bonus; over two weeks, you get good bonus for Christmas."

I said, "It's all right, but we have a right to organize. The law says we have the privilege to organize."

And Andy says, "It's all right to organize other business but I tell you there wouldn't be union here."

So I said, "All right, we will see about that; they going to be union here."

Q. Andy Vajentic said there will be no outside union?

A. No. He say, "Other place, but not here."

[fol. 525] I say, "We will see to that, they going to be here, too."

Q. Did he talk to you after that?

A. He talked to me almost every day since that, too, about three weeks before strike.

Q. What did he generally talk to you about in those times he would talk with you?

A. Well, he wants know, he want to find out how this whole start, how this union start. He asked me, "How is this start," and so on and "Who is the leader?" And I

wouldn't tell him who is the leader and how did it start. The next day he asked me, "Who is that fellow come from third floor up on the fifth floor and see you dinner time?" And I wouldn't even tell him who is it, that guy, come from the third floor to see me upstairs. Then again he tell me about some business agent of the local plaster union, this man is in that neighborhood, he said, "That guy is $16 a day and this other guy is plaster man and they work couple months a year and they don't pay union and they was kick out from the union." He told me, "This guy has a room in William Penn," that man that was business agent, he told me he live right beside him.

Q. And what about him?

A. And he said, "That man got room in the William Penn Hotel and he go around night clubs and spend lot of money and that the union man didn't have no job."

Q. Did any other boss or official of the company talk to you about unions?

A. Yes, sir.

Q. Who?

A. Mr. Heinrich, the superintendent.

Q. Can you state about when?

A. Well, I didn't remember exactly the date but that was between 15th of April and before that flood is, before 27th of April; that was between 15th and between 17th.

Q. Where were you when Mr. Heinrich talked to you?

A. Well, I was 5 o'clock, I was, you know, quitting time, then I had my card and walked home from bean building to spaghetti building, Mr. Heinrich was on the bridge between the two buildings.

Q. What did he say?

A. He had other men beside him, Steve Steidehart.

Q. Did Heinrich talk to you?

A. Then I tried to pass him. He say, "Matt, wait a [fol. 526] while." He said, "You ain't afraid of me?" I said, "No, why should I be afraid of you?" He said, "You see Steve here, he works 13 years for the company and I heard last night he was at union meeting" and then he said to Steve, "All right, Steve, you can go, I will see you tomorrow." And then Mr. Heinrich asked me, he heard I was on that meeting. I said, "Yes, I was on that meeting." And then he tell me, "You know, all this depression the company was good to me and how I make

living there, and so on, and I told him, "Yes, we make living all right, but not so very good because they cut off 25 per cent." And then I said, "It's time to get this money back." And he said, "I didn't get mine either," and then——

Q. Did any other official talk to you?

A. Yes. Then again, about three weeks before strike——

Q. What other official talked to you?

A. Not other official, but foreman?

Q. Who was that?

A. Andy, again.

Q. Did he talk to you again?

A. Andy again, yes.

Q. When?

A. That was about three weeks before the strike.

Q. Where were you?

A. That was the same place where I work.

Q. What did he say?

A. That was on a Monday, then, he tried to talk to me there about union again. He said, "Mat, we have pretty good; the inside, I think, going to get majority." I said, "I don't believe you." He said, "Oh, yes, you will find out." Then we have little more argument and then he went away and around 10 o'clock, it was little later than 10 o'clock that same day, I work on this hoist and his brother runs crane right beside, couple feet between my place and his brother, and then after 10 o'clock he went to his brother and he finished, sometime 15 minutes, sometime half hour, sometime more, so he went to his brother and tell him to come down and he said, "Dominic, don't come around."

Then he tell Dominic, "Come down on other crane." Man come in 10 o'clock, Tony Muska. I just tell him this way, with finger (indicating). That is mean he is go up take Dominic's place. And Dominic step down. And I didn't see if he hand him anything. I can't say that, because Dominic is back to my face.

[fol. 527] Then I see Dominic went from the Andy, and he stopped by the Tony Muska, and Anton Tremantine, from man to man, his brother went with that sheet from man to man.

Q. Dominic did that?

A. Yes, he went all over, from the man to man, you know, approached, I guess asked them to sign up.

Q. Mr. Canjar, this Dominic Vajentic, is he in your department?

A. Yes, he is in the same department.

Q. Does he do the same kind of work that you do?

A. He run a crane.

Q. He runs a crane?

A. Yes, he runs a crane.

Q. Did you observe him passing or going around with that paper?

A. Yes. He was about 10 minutes after 10 and 10 minutes to 12, when he come back. Then I guess he didn't finish. Then around dinner time I tell him, "Dominic, you know what you are doing?"

He said, "Yes, what I do?"

I said, "Do you know there is company union?"

He said, "Yes, but what I going to do about it?" He said, "Andy send me; I have to do it."

Then after noon I observed Dominic, he after noon went around with that paper the same, with a big paper. I believe that was six by ten, something, six by ten, big paper.

Q. Was your job changed about that time?

A. Well, that was on the same week, on a Friday, Andy comes to me and say, "Mat,"——

Q. Who came to you?

A. Andy.

Q. Vajentic?

A. Vajentic, yes.

Q. What did he say?

A. He said, "Mat, you going another hoist, and then tell Joe come here."

I went to another hoist over there. I be more busy, don't have much time, you know, over there. You have to be every minute over there beside that hoist.

On first hoist I have more spell, you know; sometime work one hour fast and then I have a spell half an hour, sometime 15 minutes or more.

Q. Have you been on the second hoist ever since?

[fol. 528] A. Yes, I was on that hoist, on second hoist, right along since that.

Q. In your opinion is the second hoist work harder than the first hoist?

A. Well, a little harder, because you have to be there every minutes.

Q. Do you see as many people doing work at the second hoist as you do at the first hoist? Are you in contact with as many people? Do you meet as many people?

A. No, I was busy. I didn't have time to talk with nobody. If I even go drink water, then I have to run and come back on my place.

Q. Do you remember exactly when this change took place? Do you remember the date?

A. Yes, that was the same week, on Friday, on Friday morning, the same week.

Q. What month?

A. Well, that was first week in May, first week in May, three weeks before the strike.

Mr. Kleeb: Cross-examine.

The Witness: Well, please, I am not finished yet. I talked with Mr. Locke too.

By Mr. Kleeb:

Q. Mr. who?

A. Mr. Locke, he has the whole building, whole bean building in charge.

Q. Mr. Locke?

A. Yes.

Q. Is that L-o-c-k-e?

A. I think so.

Q. When did you talk to Mr. Locke?

A. Well, that was the same day when I has argument with Andy. That was on a Tuesday. That is May, first week, three weeks before strike occurred. I went down to get my time card from the table, and Mr. Locke, he was standing right beside window. He said, "All right Mat, ring your card, and I want to talk to you."

Trial Examiner Walsh: Who is Mr. Locke?

The Witness: He sit right there on first. He is in charge of whole bean building.

Trial Examiner Walsh: In charge of the entire bean building?

Mr. Kleeb: Yes.

A. (Continuing): And he said, "All right, ring your card. I want to talk to you." Then I went over there, and then he said, "Mat, what do you have to do with your [fol. 529] finger under nose?" I said, "I don't know what

you mean, Mr. Locke?" And he insist I got something to do with my finger under my nose. I said, "I don't understand you." "You know, Mat, I going to fire you." I said, "What for you going to fire me?" He said, "What you do with your finger more than 15 minutes?" He insist what I have to do with my finger under my nose. I said, "I don't know what you mean by it." I said, "Mr. Locke, if you going to fire me, you are going to fire me because I am union man. That is why you are going to fire me and nothing else." And he said, "Oh, I heard you call these people names." I said, "That is a big lie. I didn't call people no names."

Then he said, "All right, Matt, I am going to investigate. If I find out, if I find you call people names, I will come tomorrow morning, I will come and fire you." I said, "Mr. Locke, all right, if you find out I call people names, you fire me tomorrow morning. All right."

Then he said, "Matt, anyhow, I like to find out how this is all start. How is this started? Who is the first to start this?" I said, "Mr. Locke, I can't tell you that who is first to start this."

Q. How did what start?

A. You know, union, who starts this, all this union, outside union.

I said, "Mr. Locke, I can't answer that question. I can't tell you first one who is start. But, you know, "I think, Mat, you know this all. You was one of first one." I said, "Well, maybe, but I can't tell you who is start it first." Then he insisted that I know. I tell him, "Sure, we have men from each department, a few men, and we organize." But he still insist that I must know who was start it first. I said, "I can't answer that question, Mr. Locke."

Then he said to me, "Mat, you know you cut your own throat." I said, "Why?" "You know you have better chance this way individually. You have better chance to get better wages." And he ask me, "What you want? You want 80 cents now?" I said, "No. Mr. Locke, I didn't ask you. I didn't ask you nothing. I ask Andy around Christmas three times for wages. They give me what I have before, but he didn't give me any. I didn't ask you nothing now this time."

And he says, "I am sorry you didn't ask me when you asked Andy for that wages." And so he said, "All right, [fol. 530] Matt. Let's see. Wait."

Then two guys was passing slips down on the street. Then he show me, "Mat, can't you identify these two guys on the street?" I looked down, and we didn't see down. They must have went away, these two guys.

Q. Then did you leave?

A. Then I leave. I went home.

Mr. Kleeb: Cross-examine.

Cross-examination.

By Mr. Reed:

Q. You never made any complaint that the second hoist was harder than the first hoist; have you?

A. What do you—I didn't made complaint because I was work on that second hoist five year before he transfer me on first hoist.

Q. Oh.

A. Yes.

Q. So you worked there before?

A. I worked five years.

Q. On the second hoist?

A. About maybe more than five years on that first hoist.

Q. And both jobs are piece work? You get what you can make, don't you?

A. They pay this way, see. If you has—if you didn't make piece work, you have day work, but if you make over day work, then you have piece work.

Q. Yes.

A. Yes.

Q. But you can get bonus on piece work if you do more work?

A. Yes, sometime. Yes, sometime.

Q. Nobody object to getting a job where they can do more work; do they?

A. Well, I was working on this two hoists since I start there. I didn't work once in a while, a couple of days around factory; I work steady on these two hoists.

Q. Did you ever complain to the union or to Mr. Locke or to anybody else about transferring you to this second hoist since the strike?

A. No. Why should I complain?

Q. You never have, have you?

A. Why should I complain? Maybe they tell me, "If

you don't satisfied, go on home.'" Why should I complain? I have to keep quiet, that is all.

[fol. 531] Q. You never have complained, have you?

A. No, I never complained.

Q. You know you have a union grievance committee. You can go and talk to them about it, can't you?

A. Well, that time we didn't have a union yet.

Q. Well, you have a union now. You have had since the strike, haven't you?

A. Well, I won't bother them.

Q. You didn't—You wouldn't bother them?

A. No, because I am not scared work no place, not even on that hoist.

Q. Because what?

A. I am not scared work no matter what kind of a job. I can stand it.

Q. Yes. And you didn't think that was to discriminate against you at all, did you?

A. Oh, yes, that was discrimination.

Q. Why didn't you complain to somebody about it?

A. Well, because I don't feel I going, you know, maybe they spread around that Mat is scared, he is too lazy to work on this place. That is what I feel. I don't complain. This is discrimination, because I has on first hoist sometime half an hour, well, sometime even one hour, because I was one hour fast and everything shoots down, and I have rest. On this hoist I have to be every one minute on this hoist.

Q. You can make more money on this job though, can't you?

A. No; no, same, the same wages on first and the second.

Q. You can make more on your piece work, can't you?

A. What?

Q. You can make more money on piece work when you work more, can't you?

A. Well, yes, when it runs more machine, then we make a few cents more every day, yes.

Q. Now, you weren't afraid to talk to any of these men about the union? You weren't afraid to talk to Vajentic or Locke or anybody, were you?

A. Absolutely, I am not afraid to talk.

Q. They weren't trying to influence you, were they?

A. Oh, yes. Oh, yes, they try, yes.

Q. And you talked to all the men around there about the union, didn't you?

A. Absolutely, on my time, on dinner time, yes.

[fol. 532] Q. But you talked to the men around there, the workers. You got cards signed for the union, didn't you?

A. Where? Inside?

Q. Yes.

A. In there?

Q. Yes.

A. No, absolutely not.

Q. You got cards signed for the outside union, didn't you?

A. Sure, I sign for outside union.

Q. And you talked to the fellows on the job about the outside union?

A. No, not around the job.

Q. And didn't the bosses complain to you several times about your annoying people?

A. Once Mr. Locke, he told me, and Andy, "Mat, don talk to people." I said, "Andy, I keep my work. I can't—You know—". That was a hole about five, six foot, and everybody pass that much passage beside me, and then everybody pass and looking in this hole, so I can't tell man, "Go and get out of here." And then since this man just take a look in this hole, they came, Andy and Locke, they came right on me, jump on me, "Mat, why you keep this people back?" I say, "I no keep them. They looking down. I no can tell them, 'Get out of here.'"

Q. You talked to everybody that passed there about the union; didn't you?

A. No, absolutely I didn't.

Q. And that was Mr. Locke who spoke to you about that?

A. No, he didn't spoke about that.

Q. And you said before anybody had mentioned union, you said, "if you fire me for calling names, it is because I belong to the union"; it that right?

A. I tell him if he fire me, he fire me because I am union man, because I am strong for outside union. That is what I tell Mr. Locke in the face.

Q. So you are the one that started the union talk with Mr. Locke?

A. He start it first, because he said, "I want to know how this all started," Mr. Locke, yes.

Q. He told you you were calling names to people, didn't he?

A. Yes.

Q. And you are the one that mentioned the union?

[fol. 533] A. Yes, I mention if he fire me, he fire me because I am a union man. That is what I tell him, if he fire me, he going to fire me I am union man. But then he ask me after how this all started. He want to find out of me, so I wouldn't tell him how this all start.

Q. How long had you known Andy Vajentic?

A. Oh, I know Andy ever since I come from the Old Country, come over from 1921 I know him, since 1921.

Q. Since 1921?

A. Yes, since I come here in this country.

Q. What country did you come from?

A. From Jugoslavia, Croatia.

Q. Is that where Andy came from, too?

A. Yes.

Q. You have been very friendly with him, haven't you?

A. Oh, well, we talk. We didn't, you know, have fight or so on, except now after union some grievances.

Q. But you talked to Andy Vajentic about unions or politics or anything else any time; didn't you?

A. If he ask me that.

Q. Yes.

A. If he didn't ask me I never talk, but he ask me sometime, I am talk. I am not scared to talk.

Q. You talked to Mr. Heinrich lots of times about things, about politics and about other items?

A. No, not politics.

Q. There was nothing unusual in you having a conversation with Mr. Heinrich about anything when you met him, was there?

A. Not politics, but if he pass me he said, "Hello, Mat," I told him, "Hello." If he ask me some question, then I answer, but not politics at all.

Q. Now, none of these men asked you to join the association, did they?

A. No, because they know I am strong for outside.

Q. And you were always active in the outside union from the very start, weren't you?

A. Absolutely.

Q. And they all knew that, didn't they?

A. They knows.

Q. All these bosses that you talked to knew that, didn't they?

A. They know, sure.

Q. You don't think they had any intention or hopes of [fol. 534] changing you over to the association, do you?

A. Oh, they try. They go around bushes and try to get me, but they know they can't buy me. They didn't have enough money to buy me.

Q. Everybody in the Heinz Plant knew you weren't going over to the association, didn't they?

A. Oh, if I join, I guess everybody knows that I join.

Mr. Reed: That is all.

Mr. Kleeb: That is all.

Trial Examiner Walsh: I have one question or two.

By Trial Examiner Walsh:

Q. About your new job, is it the same kind of work as you were doing?

A. Yes, but just——

Q. You mentioned that you are paid piece work rate; is that correct?

A. We have paid now 66 cents, and if he makes more over 66 cents, then he has piece work, but now since we have agreement, now, if I made one day $6 and other day make $5, they make even. They take from this day and give for that first day, see.

Q. Do you mean that you are paid an hourly rate of sixty some cents?

A. Well, I has before three weeks, I have paid 66 cents, and if I make over, I get over, but since that——

Q. How do you make over your hourly rate?

A. Because we have one cents from the basket, one cents. If I pull more than 66 baskets, then I get the piece work.

Q. In a day or an hour?

A. In an hour, yes, 66 cents.

Q. If you hoist more than 66 baskets in an hour you are paid an additional amount by the piece; is that right?

A. Yes, sir.

Q. So that you have an opportunity on this new job to hoist more baskets?

A. No, can't hoist more, hoist the same is how many I hoist.

Q. I thought you said that you had less time to talk on your new job than you had on the old?

A. I don't have spell like on first. I don't have spell, you know, rest on this job. I have to be every one second. [fol. 535] Q. If, on your new job, you don't have any rests such as you had on your first job——

A. Yes.

Q. Then you must be working more; is that right?

A. Oh, yes, a little more.

Q. You hoist more baskets?

A. Not more, but a little more work than on first.

Q. What kind of work is it that you have more if it isn't hoisting baskets?

A. I hoist them up and put them on trucks, and I push the truck from this hole to crane, under one crane and under another. And first hoist, I have just lift the baskets and set them down; I don't have to push over there and walk back. On this second hoist I have to run all day over there and back.

Q. Let me get at it in another way. How much were you making on the average in a week's full time on your first job?

A. Well, on first since after strike I have if I work eight hour a day I have $5.28.

Q. In a day?

A. But we don't have regular hours. Sometimes we work——

Q. Yes. Well, in a day of eight hours you would make $5.28?

A. Yes, if we work eight.

Q. That is at the 66 cent rate?

A. That is right.

Q. Your hourly rate is the same on your new job, 66 cents. And how much do you make in eight hours on the average or actually how much have you been paid?

A. I don't know. I don't understand just how this company figure up.

Q. Do you get paid every week or every two weeks or what?

A. I got every two weeks. We have pay on 18th and 3rd in month, but sometimes we have on 20th or 4th or 5th.

Q. Are you working full time now?

A. Yes.

Q. Eight hours a day?

A. Not eight, seven, seven and a quarter, seven and a half, seven and three-quarters, depends. When we finish, we go home.

Q. How much was your last check?

[fol. 536] A. My last check supposed to be $55.51, but I was short $2.51 on my figures. That is why I don't understand how they figure out. If a day has 450 baskets, the next day if I pull 600, 650, I make next day maybe $6, and first day I make $4.50. They took from this day I make over and give for this first day. I don't make enough. I don't understand this.

Q. Your checks run a little more than $50 in two weeks?

A. Yes.

Q. How much were they running on the old job, the first job that you had?

A. Well, that is depend. Sometimes make more money, some time less, sometimes less, sometimes more.

Q. Than what? Than $50?

A. Yes. Sometimes less, sometimes more. We never get, you know, regular check. We get this payday a few dollars more, this other payday a few dollars less.

Q. One more question. Would you say generally, so far as pay is concerned, that your job now is a better-paying job than the one that you had?

A. No, is paying same wages from first.

Q. You don't make more on the present job than you made on the first?

A. No, I don't make one cent more. The same wages.

Trial Examiner Walsh: I have nothing more.

Mr. Kleeb: That is all.

Trial Examiner Walsh: That is all.

(Witness excused.)

Mr. Kleeb: May I ask for a 10-minute recess, please?

Trial Examiner Walsh: Yes. And, before the recess, may I state that yesterday afternoon Mr. Kleeb entered as Board's exhibit No. 10 for identification a memorandum issued by the Heinz Employees Association on October

25th of this year to the members of the employees' association. It was objected to. It was identified by Mr. John Koontz, if I recall correctly, and it was objected to by the respondent's counsel.

I have read it and I wish to overrule the objection of [fol. 537] the respondent and admit this as Board's exhibit 10.

(Thereupon the document heretofore marked as "Board's Exhibit No. 10" for identification was received in evidence.)

Trial Examiner Walsh: A 10-minute recess.

(Thereupon a short recess was had.)

Trial Examiner Walsh: The hearing will please come to order.

Mr. Kleeb: Joseph Marinc.

JOSEPH MARINC, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Joseph Marinc?
A. Yes.

Trial Examiner Walsh: The spelling?

By Mr. Kleeb:

Q. That is M-a-r-i-n-c?
A. Yes.
Q. You live at 918 Perealto Street?
A. Perealto Street.
Q. That is on the North Side of Pittsburgh?
A. Yes.
Q. And you work for the Pittsburgh plant of the H. J. Heinz Company?
A. Yes.
Q. You have been there about how many years?
A. About past 18 years.
Q. 18 years?
A. Yes.
Q. And you are in the bean-packing department?
A. Yes.

Q. That is in the bean building?
A. Yes.
Q. And your boss is Andy Vajentic; is that right?
A. Yes.
Q. He is foreman?
A. Yes.
Q. Were you ever asked by anyone to join the Heinz Employees Association? Did anybody ever ask you to join?
A. (Witness shakes head negatively.)
[fol. 538] Q. Were you ever asked to join the association?
A. On me?
Q. Yes; were you ever asked by anybody?
A. No, no, no.
Q. Did Andy Vajentic ask you to join?
A. (Witness nods head affirmatively.)
Q. Just take your time now and tell us what happened. You are a Croation, aren't you?
A. Yes, Croation.
Q. You don't speak very good English, do you?
A. Not very much.
Q. Did you ever sign your name for the association? Did you ever sign your name?
A. (Witness shakes head negatively.)
Q. Did you ever sign any paper for the association?
A. No. Yes, sir.

Mr. Kleeb: Off the record. If the Trial Examiner please, may I go off the record?
Trial Examiner Walsh: Yes.

(Discussion ensued off the record.)

Mr. Reed: The witness on the stand, being a Croatian, and having difficulty in understanding or answering questions, counsel stipulates that if the questions could be put to him by an interpreter he would testify that Andy Vajentic is his foreman, and told the witness to go and see Dominic Vajentic, a brother of Andy Vajentic, and a fellow-worker of the witness, to sign a paper.
Mr. Kleeb: More than that.
Mr. Reed: Sign a paper for the association.
Mr. Kleeb: And Dominic and this witness, instead of doing that, went to the men's washroom and were followed there by Dominic Vajentic with the paper. This witness

did not sign the paper, but Dominic Vajentic put the witness' name on the paper himself.

Mr. Bostwick: That is without prejudice to our right——

Mr. Kleeb: —to prove that he didn't do it?

Mr. Bostwick: Yes.

Mr. Reed: There is one other thing that we want to show, and that is that the witness is of the same nationality as Vajentic and has known him a long while and frequently talks with him about all kinds of matters. Those Croations are a great class group.

Mr. Kleeb: Is Vajentic a Croatian?

[fol. 539] Mr. Bostwick: They are all Croatians there.

Mr. Kleeb: I will so state that.

Mr. Reed: I will put that in.

Mr. Kleeb: I will stipulate that it was customary for this witness to discuss matters in general with fellow-Croatians and the foreman, Andy Vajentic.

Trial Examiner Walsh: Are you getting that, Mr. Reporter?

The Reporter: Yes.

Mr. Bostwick: With the understanding that we are not admitting that the man signed. We don't know.

Trial Examiner Walsh: Yes, this is entirely without prejudice to your later proof.

Mr. Kleeb: That was the point, sir, that I wanted to develop by this witness.

Trial Examiner Walsh: Yes. That is entirely acceptable to me.

Mr. Kleeb: That is all.

(Witness excused.)

Mr. Kleeb: John Maternick.

JOHN MATERNICK, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are John Maternick?

A. Yes, sir.

Q. You live at 3318 Cargell Street?

A. Yes, sir.

Q. That is in the North Side of Pittsburgh?
A. No, it is on Herron Hill.
Q. Herron Hills, Pittsburgh, Pennsylvania?
A. Pittsburgh.
Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. Yes, sir.
Q. About how long have you been an employee?
A. About eight years.
Q. What department?
A. Bean baking.
Q. Is that in the bean building?
A. Yes, sir.
Q. Who is your foreman?
A. Andy Vajentic.

[fol. 540] Q. Mr. Maternick, do you recall anything unusual happening in your department during working hours on or about April 28th of this year?
A. Yes, sir.
Q. Will you state what occurred?
A. My co-worker, Frank Muskon,——
Q. Frank who?
A. Frank Muskon.
Q. Do you know how to spell that?
A. M-u-s-c-o-n. He goes to breakfast at 8 o'clock and returns in half an hour, and when he come back on April 28th from his breakfast he mentioned about getting members for Heinz Association, to get at least 51 percent to buck out the outside union.

I listened, and then we had to start up on our work, so we got to work, and a little after that Mr. Locke appeared.
Q. Who is Mr. Locke?
A. He is the head of the bean building.
Q. What did he do that you observed?
A. Well, he was there talking to him.
Q. Talking to whom?
A. Frank Muskon.
Q. Go ahead.
A. He had a slip of paper. I didn't know first what it was all about, but they talked, and then I passed by and I heard Frank Muskon saying something about he don't want to make a fool of himself going around getting names. And they talked for a while, and then I seen a fellow

come up, and he hand him this slip, a slip of paper, and he signed his name, this fellow.

Q. Let me stop you for a minute. When you saw Mr. Locke and this Mr. Muskon, your fellow-worker, talking together, you say you observed a paper?

A. Yes, Mr. Locke had a piece of paper in there.

Q. And what did Mr. Locke do with that piece of paper?

A. Well, he gave it over to Frank Muskon.

Q. Did you observe what Mr. Muskon did with the paper?

A. Well, right then they talked over a little, and then a fellow came over, and he signed his name on this.

Q. On the paper that Muskon had?

A. On the slip, yes. After Mr. Locke left, why, Frank showed me the slip, and it says there on the left-hand [fol. 541] corner, it had his name written in ink, and then it had typewritten words about the Heinz Employees Association.

Q. I will hand you Board's exhibit 7. Will you look at it and read it and state whether that is like the paper that Frank Muskon showed you?

A. No, sir.

Q. I hand you a sheet of paper with some typewriting on it, another sheet of paper. Will you look at it and state if that is like the paper?

A. No, sir.

Q. Will you describe the paper which Muskon handed you or showed you?

A. It was a paper about that size.

Q. About the size of Board's exhibit 7?

A. Yes.

Q. Go ahead.

A. And it had lines in it, and on top of it. It had either typewriting or mimeographed words on it.

Q. Can you recollect any of the words that were on it?

A. I think there was one line, it said, "Heinz Employees Association."

Q. Did you see Frank Muskon's name on the paper any place?

A. On the left-hand corner in ink.

Q. Above or below the typewriting?

A. Above the typewriting.

Q. Do you know whether or not that was Muskon's signature; do you know whether it was or whether it wasn't?

A. No, it wasn't his signature.

Q. How do you know it wasn't?

A. Well, I feel it wasn't, and Frank has no ink right there, and no one uses ink. They did their writing in pen—pencil. In our department, when they pass slips out, why, most of the fellows don't know how to read. Well, they usually write either a time-card number or name above any notice that we get. So I figured that was for him. So that is all I seen, that name there.

Q. The name was on the top left-hand corner?

A. That is why I feel it wasn't his handwriting, although I don't know his handwriting really.

Q. Did Frank Muskon say to you anything when he handed you the paper?

A. Well, he let me read it. I looked it over, and he [fol. 542] says, "Do you want to sign it?"

I says, "No."

Q. Did you sign?

A. No.

Q. Did you observe Muskon going to other fellow-employees for signatures?

A. Yes.

Q. Did you ever sign?

A. No.

Mr. Kleeb: Cross examine.

The Witness: I can say more about what the foreman talked to me.

By Mr. Kleeb:

Q. Did the foreman talk to you?

A. Yes.

Q. Who?

A. Andy Vajentic, that same day, right after that. It was near the end of the working hours. He comes up to where I work, and he says, he asks me what do I think of the whole thing.

I says, "Nothing." I figured that probably he meant the union. So I says, "Nothing."

And then he mentioned something about—I can't get it exactly, the right wording, but we got to talking about

union, and he says, "Would you want to see others come in here and tell you what to do, another organization?"

I said, "Well, I don't know." I says, "Well, I just want to sign for outside union."

And then he told me, "Think of the other people, you know, the young ones. The young ones have to depend on you." And he says, "If they come in, they will spoil everything. Mr. Heinz will object to this association, you know, the A. F. of L. union, and he will close his business rather than deal with them."

And I says, "Well, I can't—I can't feel, you know, to join the inside. I am for the outside." That is all we had to say.

Only about three days later Mr. Locke says something to me, too.

Q. What was that?

A. He came to me and he starts off this way, he says, "I hear you are one of these bolsheviks."

I wondered what he meant. I says, "I don't know." And we talked about union there, too.

He asked me why I want to join, and I says, "Why, I don't know exactly." I says, "Perhaps just like you join a lodge."

[fol. 543] Q. He asked you why you wanted to join what?

A. Yes. What will I get from a union, from A. F. of L. union?

I says, "I don't know what I will get."

He told me that he was once a union man, and he knows what it is all about. I says, "Well, they are popular things now. Most of the fellows join the outside union."

"Well," he says, "Why don't you think for yourself?" And that is all he says to me.

Q. Did anyone talk to you after that?

A. No.

Mr. Kleeb: Cross examine.

Cross examination.

By Mr. Reed:

Q. Are you active in the union now?

A. Yes.

Q. You made an affidavit for the Labor Board which Mr. Kleeb has here?

A. Yes, sir.

Q. And why didn't you say anything in that affidavit about this conversation with Locke in which he said you were a Bolshevik?

A. I put that in there.

Q. You put that in your affidavit?

A. Yes.

Q. And you put in your affidavit the statement about Mr. Vajentic's conversation with you?

A. Yes.

Q. Now do you speak Croatian?

A. No, I am Polish.

Q. You understand the Croatians who are in that department?

A. Very little.

Q. There are a number of Croatians, aren't there?

A. There are.

Q. Who live more or less in the same community?

A. Yes.

Q. And go to the same church and talk over everything that goes on, don't they, in their community?

A. Yes.

Q. So that there was nothing unusual in Mr. Vajentic talking to any of the men in there about what was going [fol. 544] on in unions or the plant or other strikes or anything of that kind; was there?

A. Well, to me it is unusual because I very seldom talk to my boss, only about work, and I never say nothing to him on the outside, you know, outside business like politics or union. We talk just about that. It is unusual in my case because I don't have nothing to say with my foreman.

Q. Now, this paper that Muska had, you saw it in his hands all the time, did you? He didn't give it out?

A. Just that one day.

Q. Well, I mean, you didn't ever see it out of his hands?

A. Well, Mr. Locke had a sheet and I feel that it is the same sheet he gave to Frank Muska.

Q. What do you mean, "you feel"? You couldn't see it.

A. Well, they were together talking and, of course, I could not exactly watch what they were doing because I had to mind my own business, but when I heard Frank Muska say that he didn't want to go around getting names

for this association, then I felt that Mr. Locke gave it to him. Of course, I seen him handle the sheet.

Q. That is why you say that you feel that Locke had the paper first and gave it to Muska?

A. Because I didn't see it on Frank Muska before that.

Mr. Reed: That is all.

Mr. Kleeb: That is all.

(Witness excused.)

Mr. Kleeb: Mike Vilha.

Mike Vilha, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Mike Vilha?

A. Vilha.

Q. You live at 1258 Springarden Avenue?

A. Yes.

Q. North Side, Pittsburgh?

A. North Side, Pittsburgh.

Q. Speak out loud when you testify, will you please?

[fol. 545] A. Yes.

Q. Are you now employed in the Pittsburgh plant of the H. J. Heinz Company?

A. Yes.

Q. About how long have you been employed there?

A. Four years and four months.

Q. What department?

A. Bean baking.

Q. Bean baking?

A. Yes.

Q. That is in the bean building?

A. Yes.

Q. And your foreman is whom?

A. Andy Vajentic.

Q. Andy Vajentic?

A. Yes.

Q. Did you attend the A. F. of L. Union meeting April the 15th of this year?

A. Yes, I did.

Q. Where was that meeting?

A. James Street.

Q. Was anything said to you after that by any boss about attending the meeting?

A. Yes. Andy Vajentic.

Q. What did he say and when?

A. Well, next day we come to the work and Andy was walking around the platform and there was three fellows there was in that meeting there, and Andy put his hands on his nose, and he say, point to us three fellows, he say, "That is C. I. O. stink." See? That is what he pointed. And after a while he call me in the front on the side of the window and he want to know who was there. He say, "I know all about it, who was there." He tell me a lot of fellows. I say, "If you know it, why you ask me for?" That is what I told him.

And he say, "Is anybody sign up?" I say, "Why don't you go there and find out?" After he ask me he said, "Did you pay any dues?" I say, "Not yet." I said, "I just went to the meeting." See?

And he was talking to me about one day about three or four times. I was too many aside the window talking to him. See? And he asked me what do I going to have if outside union going to get in. And I told him, "Oh, better working conditions, I guess."

He said, "Don't you satisfied?" I say, "No, we work [fol. 546] hard around here."

And after he say, "Well, in California, they have three months strike there." He say, "If they don't settle, they don't go back to work." He say, "They is all going to be canned, the people, not going to have enough room." That what he say. He say, "I don't care. In this department I have to fire everyone around here." He say, "Don't going to be no inside union." That is what he told me.

Q. I didn't understand that. What did he say?

A. He told me he have to fire in this building it is for everyone there. He said there is don't going to be no outside union. See? He try to tell me how good they have there, that Heinz Company give them cards, you

know, and shows, and books, and everything, you know, 57 Club—they had picnics. And I told him, "I don't care for that stuff. I want more money." See? That is what I tell. I am not interested in that stuff.

And he told me after, "The outside is going to get in." He say, "You don't going to have nothing." And after a while he say, "Maybe you going to lose your job and I still going to be boss around here."

Q. Were you about this time offered a raise by Vajentic?

A. That was after that he couldn't do nothing with me. One time Mr. Locke come up to me, that is before that happened, and I have 45 cents an hour.

Q. You were making that then?

A. Yes, that is last year sometime.

Q. And——

A. And Mr. Locke come to me, he said, "Mike, you got a raise two cents and a half, that is going to be 47½ cents." I say, "Thanks." Afternoon, he come back, he say, "No, Mike, I make mistake. You have the raise last March during the flood." He say, "I am sorry, I make mistake, I guess." See? Well, then, I didn't ask any more, because I know. See?

And then Andy give me two and a half cents raise. He said, "Well, you have got two and one-half cents that time." That was 47½ cents. And when we started union activities there, Andy come to me once in the morning, well, he was talking union. He always talk about the union, trying to find out what the people tell me about the union. He say about the Mat Canjar, they keep him during the [fol. 547] depression, you know, his kids. He say, "He got four children home and we keep them." He pointed out that other guys working, how long he worked there for the company. See? And what he gets. He say, "He is going to have insurance. He going to lose everything." He say, "He don't going to get nothing. He going to lose his job, too." That is what he told me. He trying to believe me, you know, so I going to believe what he going to tell me about it. I didn't mind because I know Andy for four years, what he is talking, and everything. Well, I say—I just keep it down, play dumb so I don't know nothing about it.

Q. Did you get any more raises?

A. Yes. And after he give me raise, one in the morn-

ing, and he start talk, "you still want a union?" He say, "You got to pay your dues and everything." And afternoon, he come in again. Well, he says, "This pay you got two and one-half cents, next pay you got next two and a half cents. You still want a union?" And I say, "Yes."

Q. What did he say to that?

A. Well, then, he just burn up, you know, and went away, and call me in the window after a while again. See?

Q. Did Mr. Locke ever talk to you about union?

A. Yes, he did.

Q. When?

A. One day, I don't remember exactly the day.

Q. What month?

A. This was before the strike.

Q. Before the strike?

A. Yes, two weeks before the strike. And I had my card, and he say, "Go punch it and come back aside the window there on the fourth floor."

Q. I can't hear you. What did he say?

A. He say, "Go punch your card and come back." He was beside the window waiting for me. And I punched my card, throw in the box and I come back. And Mr. Locke trying to tell me why the Heinz Company don't treat me nice. And I tell him, "No." He say, "Why?" I say, "Because we work hard." I say, "We sweat and everything there and then Andy come and holler at us."

And he say, "Well, after union going to be, don't think that is going to be better." I says, "Sure, that is going [fol. 548] to be better." And he said, "Don't you think that." He say, "We can fire you any time we want to." I say, "Oh, no, you can't. You going to fire me, you going to have reason for fire me. If I work and produce, you can't do nothing." See?

Q. These times that Andy Vajentic talked to you, was that during working hours?

A. Working hours, sure. I was work maybe one day but only hour and a half, the rest of the day was talking to me. I can't even remember what he was talking about.

Q. Did anybody come to you about joining the Heinz Employees Association?

A. No, nobody ask me to join the Heinz Employees Association, just I saw the Andy, Dominic, Vajentic on com-

pany time. He supposed to stay on the crane. He didn't run it that time. He was over by the people. He come to the Frank Berkowski, and that was on the side of the platform. He don't think I look in there because maybe that time he look some place else. He don't want to see that.

Q. You observed Dominic Vajentic going around with a paper?

A. With a paper on the company time. And I holler on him, I say, "Hey, Dominic, what are you trying to do?" Then he just go with his hands like that at me (indicating).

Q. What should he have been doing?

A. Well, Andy, he coming, too.

Q. No. What should Dominic have been doing?

A. He sign a fellow.

Q. No. What should he have been doing? What was his work?

A. Running a crane. He supposed to run a crane. He didn't have no business on the back there, because he is working on the front, see? He don't have no business on the back there.

Q. Was he doing this in full view of his brother Andy? Could Andy have seen him doing it?

A. Sure, he was looking different place. I watch Andy, too. He didn't look at him. He was looking on the side there. He was on the other side of the platform there, see.

Mr. Kleeb: Cross examine. That is all.

[fol. 549] Cross-examination.

By Mr. Reed:

Q. Andy knows all those men pretty well and has known them for many years; hasn't he?

A. Yes, he does.

Q. A great many of them are Croatians and go to the same church and came from the same country and speak the same language; don't they?

A. Yes, they do.

Q. You have had some pretty heated arguments down there sometimes when Andy says what he thinks and shouts, haven't you?

A. Andy? Andy has arguments every day with somebody there.

Q. Sure.

A. He play the people for dumb.

Q. There aren't any of the men who would be afraid to vote for an outside union because of anything that Andy said?

A. What do you mean? Explain to me.

Q. There weren't any of those men in that department who were afraid of Andy or who would join the association because Andy told them to; was there?

A. That is plenty men like this there.

Q. Well, all those men in that department belong to the union mostly, don't they?

A. They was 46 people there, and that about 7 people belong to inside union.

Q. And all the rest?

A. And the rest to outside. They sign up on the both sides and they tell everyone they sign up because Andy was after them. That is why they sign up.

Q. And you don't think that he affected any of those men in that department when they came to vote in the election, do you?

A. What do you mean?

Q. They all voted however they wanted to in the election?

A. Sure. You are supposed to do that.

Q. And Andy didn't like any unions; did he? Andy didn't like the C. I. O. either, did he?

A. He didn't like C. I. O. He like inside union. He was talking about the inside union.

Q. He said the C. I. O. stinks too, did he?

A. He say C. I. O., sure, because he was against that.

Q. And it had nothing to do with that? That is an [fol. 550] A. F. of L. union over there, isn't it?

A. Because he don't know first time what that was.

Mr. Reed: That is all.

Mr. Kleeb: That is all.

(Witness excused.)

The Witness: I got some more to say, too.

Mr. Kleeb: Nick Belovitch.

NICK BELOVITCH, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Nick Belovitch?
A. Yes, ma'am.
Q. You live at 1039 Perealto Street?
A. That is right.
Q. North Side, Pittsburgh?
A. Yes, sir.
Q. You are now employed in the Pittsburgh plant of the H. J. Heinz Company?
A. Yes, sir.
Q. About how long?
A. 14 years four months.
Q. Are you in the bean baking department?
A. Yes, ma'am.
Q. And Andy Vajentic is your boss?
A. Yes, ma'am.
Q. Mr. Belovitch, were you ever approached during working hours by any boss about joining the association? Did anybody approach you about that?
A. About I working in my place, boss come to me, say, "Nick, anybody say to you?" I say, "Yes, Frank Muska." He ask me why. I say, "I no want to sign my name for inside union." Boss say, "You want to?" I say, "No." "Why not?" "I no like it."

But Boss tell me, "Listen, that is going to be better, you sign that inside union, because we save Heinz' business. You know, you old man. The Heinz going to move factory." "What you going to do?" I say "Where are you going to move, in airplane?" Boss tell me, "You 100 per cent worse like anybody else." That is all.

Q. Andy Vajentic told you that?
A. Yes.
[fol. 551] Q. And about when did Andy say that?
A. Well, Andy say about I was worse like anybody.
Q. When was it?
A. About three weeks before the strike.

M. Kleeb: Cross examine.

Mr. Reed: No cross examination.
Mr. Kleeb: That is all.

(Witness excused.)

Mr. Kleeb: Matthew Ahel.

MATTHEW AHEL, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Matthew Ahel?
A. Yes.
Q. A-h-e-l?
A. Yes, sir.
Q. You lived at 500 Chestnut Street?
A. Yes, sir.
Q. North Side, Pittsburgh?
A. Yes.
Q. You are now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. Yes, sir.
Q. About how long have you been employed there?
A. 12 years.
Q. You are in the bean baking department?
A. Yes, sir.
Q. That is in the bean building?
A. Yes, sir.
Q. Who is your foreman?
A. Mr. David White.
Q. Who?
A. David White.
Q. Were you working in this department the latter part of April of this year?
A. Yes, sir.
Q. Do you recall whether anything unusual happened in your department around that time?
A. Yes, I do.
Q. Will you state what happened?
A. One day, it is about 10 o'clock in the morning, a

[fol. 552] certain employee from another department came in our department and went to a certain girl by the name of Viola Gable.

Q. Gable?

A. Gable. So he was talking to her for about half an hour.

Q. Do you know this employee's name?

A. I think his name is Ubrey.

Q. Ubrey?

A. Yes.

Q. That is the employe- who came to Viola Gable?

A. Yes.

Q. Go ahead.

A. Then he was talking to her for half an hour and he walked away. See? And this girl, she went around to the other girls from one labelling machine to the other labelling machine, and she was talking to the girls about joining the Heinz Employees Association.

Q. How do you know that she was talking about that?

A. Because she told me at dinner time after we came back from dining room.

Q. Who told you that?

A. Viola.

Q. What did she tell you?

Mr. Reed: This is objected to. This is a long ways away. I suppose the inference is that it was done on company time, and if the witness was going to testify to that, that is one thing, but now he is going to say what somebody told him who was approached by some solicitor for the association.

Mr. Kleeb: If the Trial Examiner please, I would like to make this point. The witness has testified that this Viola Gable, that he observed her soliciting signatures among the girls at their machines. Now, he is going to relate what Gable told him she was doing.

Mr. Reed: Gable isn't connected with the management in any way.

Mr. Kleeb: Well, it certainly is similar to all the other departments, when the timekeepers, employees, in full view of the foremen went around on company time soliciting signatures. I think it is just as competent now for him to testify what she told him she was doing as it was competent prior hereto to have similar employees, similar

witnesses testify what similar employees have done with these papers.

[fol. 553] Trial Examiner Walsh: Is Gable going to be brought as a witness?

Mr. Kleeb: Sir?

Trial Examiner Walsh: Are either of these people going to be brought as witnesses?

Mr. Kleeb: Gable? No.

Mr. Reed: I assume, of course—I think that we went a long ways in the first place. I assume that the purpose of letting anybody say what anybody not connected with the management was doing was perhaps an inference that the management knew or approved or saw, but this is a different thing entirely. This is another conversation.

Mr. Kleeb: Why, I don't think so. Suppose my question isn't clear, and I will try to redraft my question.

Trial Examiner Walsh: I might say that the objection to this particular question will be sustained.

By Mr. Kleeb:

Q. Does Viola Gable work in the department where you work?

A. Yes, she was working.

Q. Did you observe her going to the various girls in the department with a paper?

A. I did.

Q. Was it during working papers?

A. Yes.

Q. Was it in full view of the bosses?

A. Yes.

Mr. Reed: That is slightly leading, Mr. Kleeb. Let the witness testify about it.

Mr. Kleeb: I don't known whether it was leading. He could answer whether it was in full view or whether it was not.

Mr. Reed: That is what a leading question does.

Mr. Kleeb: I don't think it is.

By Mr. Kleeb:

Q. Do you know what the paper was that Viola Gable had?

A. No, I didn't know that time.

Q. Did she ever tell you what it was?
A. She told me at dinner time.
Q. What did she tell you?

Mr. Reed: I make the same objection I made before. It is the same thing.

Trial Examiner Walsh: This is a direct conversation this witness had with Gable?

Mr. Kleeb: That's right.

[fol. 554] Trial Examiner Walsh: I think the objection will be sustained.

Q. You say this solicitation you observed was in full view of the boss. Is that a foreman or forelady?
A. Foreman and forelady.
Q. Who is the forelady?
A. Katie Griebel.
Q. Did Mr. Locke ever discuss unions with you?
A. He did next day, he came around our department and called department together.
Q. Called who together?
A. All departments, from other department.
Q. Where were they called together?
A. By the desk.
Q. Did he talk to this group?
A. He step up in the chair and was talking to everything.
Q. What did he say?
A. He was talking about everything; got union here and plant employees' association, and he say all girls that was sign yesterday, paper, the day before, they sign for the Heinz Employees Association, but these girls didn't know what they was signing until dinner time, so they destroyed that paper, so Mr. Locke, next day, he said all girls that signed this day, the first paper disappeared, he told them to go to the desk and sign their names again, so these girls went to the desk and signed their names.
Q. Did Mr. Locke discuss the association, what its ideas and purposes were, or anything of that sort?
A. No.
Q. Were you ever asked to sign for the association?
A. I never did.
Q. Following that meeting Mr. Locke had with the employees, did you ever again discuss unions with him?
A. He stopped over at my place and he asked me a lot of times what I am going to get from the union. He said,

why I do it, because I organize union, because me and couple fellows were organizing in that department.

Q. What did you say?

A. I didn't say nothing. He didn't give me a chance to. So one day he said I am going to be sorry by what I am doing; 10 years from now.

Mr. Kleeb: Cross examine.

[fol. 555] Cross-examination.

By Mr. Reed:

Q. When was this conversation that Locke told you you would be sorry?

A. Before the strike.

Q. And there was a good deal of trouble in that department, and Locke was trying to stop the fighting and somebody stole the association petitions?

A. That's what Locke say, but the girls say it disappeared.

Q. It disappeared, and there was some trouble, and he called the employees together to talk to them, didn't he?

A. Yes.

Q. And he read a statement to them, didn't he?

A. Yes.

Q. And in that statement he said they could belong to anything they wanted to?

A. Yes.

Q. But they couldn't steal each other's petitions? He said, "If you want to join the A. F. of L. I will protect you just the same as if you want to join the association"?

A. Yes, he told us if we want to join the butchers' union.

Q. He said, "Those girls that signed that paper yesterday, they can sign it again; they have a right to do it and I will protect you"?

A. Yes.

Q. He didn't say in favor of one or the other?

A. No.

Q. But he told them the right to organize didn't give them the right to steal other people's papers?

A. Yes, he did.

Q. There wasn't anything wrong about that?

A. There wasn't anything wrong but they was all scared because it was foreman, forelady, and him, so they went back again and signed it.

Q. He wasn't there when they signed it?

A. Yes, he was.

Q. He left immediately when he told them that, didn't he?

A. I don't think he did. I couldn't remember.

Q. He scolded them about stealing each other's petitions, and left, didn't he?

[fol. 556] A. I can't remember that.

Q. You don't say that he stayed there while anybody signed, did he?

A. I know he told them to go to the desk and sign.

Q. He said anybody whose name was on that paper yesterday that wants to sign it can sign it, didn't he?

A. Yes.

Q. But you don't say he was there when anybody signed that paper?

A. I couldn't say.

Q. You were active in the union from the start, weren't you?

A. Yes.

Q. And nobody ever tried to force you to join the association?

A. No, they never asked me.

Mr. Reed: That's all.

Mr. Kleeb: That's all.

(Witness excused.)

Mr. Reed: Before adjournment I would like to call on Mr. Kleeb to produce the affidavit filed with the Labor Board by John Maternick in corroboration of the cross-examination.

Mr. Kleeb: I would like to know for what reason and why any affidavit of anyone should be produced by me.

Mr. Reed: The witness, as I said, admitted certain statements in that affidavit. We have a right to have the affidavit produced to corroborate or contradict that. Now, it's unusual to subpena the opposition party. I wouldn't think that would be necessary. I should think the Labor Board would produce an affidavit under those circumstances.

Mr. Kleeb: If the Trial Examiner please, I know Mr. Reed is referring to the additional testimony given by that witness. I will say for the record that this witness was

being questioned by me upon information I received by him, and when he used the word "affidavit" I am certain he meant information, because this witness told me the story, and I am frank to admit from my own trial brief I did have the information which he added additionally, and through my own inadvertence I failed to question him on it.

Mr. Reed: That's argument on it.

[fol. 557] Mr. Kleeb: I refuse to produce his affidavit, if I have one, and I am not saying whether I have one.

Mr. Reed: I call upon the Labor Board counsel to state whether or not he has an affidavit from John Maternick, and to produce it, and I say that if he does not do so I will petition the Labor Board unless the Examiner sees fit to rule on it himself, to require the production of that. This is a paper given to a Government agency. He can't suppress that.

Mr. Kleeb: I refuse every request of Mr. Reed unless ordered to comply by the Trial Examiner.

Mr. Reed: I make the request for such an instruction now.

Trial Examiner Walsh: Are you certain on this point, Mr. Kleeb?

Mr. Kleeb: I can't answer that right now. I will have to check with the original statements I have. I don't recall that this man gave me an affidavit. He gave me his story, but I can't recall whether he gave me a written affidavit.

Trial Examiner Walsh: I will reserve ruling until after adjournment.

Mr. Reed: Did you not have before you, when you were examining this witness, an affidavit or a copy of any affidavit of John Maternick?

Mr. Kleeb: I did not.

Trial Examiner Walsh: Adjournment until 1:30 p. m.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 1:30 p. m.)

After Recess

(Whereupon the hearing was resumed, pursuant to recess, at 1:30 o'clock p. m.)

Trial Examiner Walsh: The hearings will please come to order.

Mr. Reporter, will you make a note at the beginning of your record that in this interim the Examiner has spoken to both counsel for the Board and for the respondent and finds that the affidavit which was requested by the respondent's counsel just before our last adjournment does not exist. There is no affidavit. Consequently, no ruling need be made concerning the question that was posed at the end of the morning hearing, and that this is understood [fol. 558] by both counsel.

All right, Mr. Kleeb.

Mr. Kleeb: Tony Novagadiac.

TONY NOVAGADIAC, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Kleeb:

Q. You- name is Tony Novagadiac?
A. Yes.
Q. That's N-o-v-a-g-a-d-i-a-c?
A. That's right.
Q. And you live at 1021 Vinial Street?
A. Right.
Q. North Side, Pittsburgh?
A. Right.
Q. And you are now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. That's right.
Q. About how long have you been an employee there?
A. Three years and nine months.
Q. What department?
A. Bean department.
Q. What part of the bean department?
A. Bean cleaning.
Q. Bean cleaning?
A. That's right.
Q. That's in the bean building?
A. Department.
Q. Is that department in the bean building?
A. Yes, sir.

Q. And who is your foreman?
A. It was John White before the strike.
Q. And who is it now?
A. Jim, it's hard to pronounce his last name.
Q. His first name is Jim?
A. Yes.
Q. Do you know what his last name is?
A. Yes, when I see it. I couldn't pronounce it.
Q. You can't pronounce it?
A. No.
[fol. 559] Q. But before the strike in May of this year the foreman was John White?
A. That's right.
Q. Did John White ever talk to you before the strike about the Heinz Employees Association?
A. Yes, he did.
Q. How long before the strike?
A. About three weeks before the strike.
Q. Where were you when he talked to you?
A. In the department.
Q. During working hours?
A. That's right.
Q. Please relate what John White said and what you said, at that time.
A. It was right after lunch hour, and John White come back in the department, and I was working, I wasn't having lunch or anything, I was working straight through. Then he stepped beside me and started talk about union and I repeat his word and asked him what union he mean and he told me, "Heinz Association."
Q. What did he say about the Heinz Association?
A. He was talking to me, he said it would be good advice for me to sign Heinz Association and further, he was talking more and more, and I told him, I said, "Mr. White," I says, "I wouldn't sign up nowhere; either in, either out." I says, "I am going to stand first to see what's going to be all about it"; and he was talking to me about it, how this company treats me, and this and that, and I brought it to the point in front of him, when I started to work for H. J. Heinz Company I had $28 in two weeks, and I says, "What's results I had off of this $28 in two weeks, to live on it?"
I says to him, I says, "I think this is the greatest things

in the world, what is coming, so people get remove on the labor move, so get at least better, decent living."

And he says to me, he says, "It would be better idea for you to join the Heinz Association; if inside union win," he says, maybe I find myself, I be out of job some day; and I didn't ask him a question at that because I was rushed and got to work, because I was talking to him and watching my job.

Q. About how long was he there talking with you?

A. Yes, I says between five, five, ten minutes, something like that.

Q. Did any other boss or official ever talk to you about [fol. 560] the association or about unions?

A. Well, Mr. Locke was coming, week before strike.

Q. You say Mr. Locke?

A. He was came after Mr. White, a week before the strike.

Q. And where were you when he——

A. I was working.

Q. What did Mr. Locke have to say?

A. Mr. Locke come and asked me, talked to me, what I am thinking about union, and this and that. Then I told him: Mr. Locke told me, he says, Mr. White told him I didn't belong to no way, yet, either in our out.

I says, "That's perfect."

Q. Locke told you that White said that to him?

A. Yes. And I told him, "That's right, I no belong to no place."

And Mr. Locke says to me, he says, what I am thinking about the inside union?

I says, "I don't see either one of them, the inside or outside."

And Mr. Locke told me, he says, change my mind, I let him know the next day, or second day after. Well, that was about middle of the week, and next week we went on strike the first day of week, Monday night, so I didn't have any chance to give him answer on that.

Q. Were you ever asked by anyone to sign a paper for the association?

A. No.

Mr. Klebb: Cross examine.

Mr. Reed. No cross-examination.

(Witness excused.)

VICTOR LOUKANS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Kleeb:

Q. You are Victor Loukans?
A. Yes, sir.
Q. L-o-u-k-a-n-s?
A. That's right.
Q. You live at 408 Armdale Street?
A. Armdale Street.
Q. Where is that? Pittsburgh, North Side?
[fol. 561] A. North Side.
Q. Are you now employed at the Pittsburgh plant of the H. J. Heinz Company?
A. Yes, sir.
Q. How long have you been an employee there, approximately?
A. About 18 years.
Q. What department do you work in?
A. I was working, until lately, in the bean-packing.
Q. Sir?
A. Until about two weeks ago, was working in bean-packing.
Q. Bean-packing?
A. Yes, sir.
Q. Is that in the bean building?
A. Bean building.
Q. Were you in the bean-packing department at the time of the strike?
A. Yes, sir.
Q. Who is your foreman?
A. Dave White.
Q. Is there a forelady in that department?
A. Yes.
Q. What's her name?
A. Kate Griebel.
Q. Do you know how to spell her last name?
A. No.
Q. Do you recall anything unusual happening in the early part of May in this year, in your department?
A. Yes.

Q. Will you state what happened, please?

A. Some fellow come around in our department with a sheet of paper and asked one girl to go around and try to get —sign up all the girls and everybody.

Q. Who was that?

A. I don't know his name.

Q. Were you approached?

A. No.

Q. Anybody ask you to sign?

Q. Dave White asked me to sign.

Q. What did he say?

A. He said, "How about your signing?"

Q. What did you say?

A. I said, "No."

Q. Did you ever sign?

A. No.

[fol. 562] Q. Did Dave White have the paper with him when he asked you to sign?

A. No.

Q. Did any other official ever discuss the association with you or with any employees in your presence?

A. No.

Mr. Kleeb: Cross examine.

Mr. Reed: No cross examination.

Mr. Kleeb: That's all.

The witness: I had some more, yet; that wasn't all.

By Mr. Kleeb:

Q. What is you had?

A. A fellow come around with a sheet of paper to get a girl to get them to sign up.

Q. Did he come to you?

A. No, to a girl in our department.

Q. How do you know he came to the girls in your department?

A. I seen him.

Q. Did you see the paper?

A. Yes.

Q. Did you read the paper?

A. I had a glance of it. It said something about employees' association.

Q. I show you Board's exhibit 7 (handing to witness). Is that like the paper you saw?

A. Something like that.

Q. Was it a paper somewhat like that in size?

A. Yes, that size.

Q. Did you know who the fellow was that was going around with the paper?

A. I don't know his name. He is foreman in a different department. He asked girl to go around in our department to get names signed up.

Q. Did anything else happen?

A. And a girl went around and nobody would sign up.

Q. How do you know that?

A. Well, she didn't have nobody on that sheet of paper.

Q. Then what happened?

A. Then the forelady got in on that, and she started going around the girls and talking to them, and almost threaten their jobs if they don't sign up.

Q. How do you know that?

A. I heard it.

[fol. 563] Mr. Reed: I move to strike that answer out.

By Mr. Kleeb:

Q. You heard what?

A. The forelady threaten——

Mr. Bostwick: Just a moment.

Trial Examiner Walsh: Let's get the answer on this.

By Mr. Kleeb:

Q. I asked you how you knew the forelady threatened anyone?

A. I heard her.

Q. You heard her yourself?

A. Yes.

Q. Is that this Kate Griebel?

Trial Examiner Walsh: Ask him what he heard her say.

By Mr. Kleeb:

Q. What did you hear the forelady say, that you say she threatened the employees if they didn't sign?

A. She said if they don't sign up they might find themselves on the street. They ought to know where they are getting their bread and butter.

Q. Anything else happen?

A. And a few days after that Mr. Locke called a meeting in the department and read off a long letter and just before that the girls signed up when the forelady scared them in; they signed up and somebody explained to them what it was, and they destroyed that paper.

After they destroyed that paper Mr. Locke called a meeting in the department.

Q. Were you at that meeting?

A. Yes.

Q. Will you state as best you can recollect what Mr. Locke said?

A. He said something that there would be no discrimination what they signed and which side they sign, but he said anyone had signed up he wanted them to resign. He left a girl with a sheet of paper, and he wanted them to resign.

Q. Anything else happen that you can remember? Did the girls sign?

A. Yes, they kept them waiting for couple of minutes there, and they give them bad looks, and they all signed up.

Q. In the room, there?

A. Yes, right at the desk.

Q. While they were all together?

A. Yes. They had about three of four foremans around them.

[fol. 564] Q. Who was around them?

A. Locke, White, and the forelady, and an inspector—What's his name?—Nagel.

Mr. Bostwick: What was that?

Mr. Kleeb: I will tell you what it was.

Off the record please.

Trial Examiner Walsh: Off the record.

(Mr Kleeb gave a brief summary of the last few questions and answers.)

By Mr. Kleeb:

Q. Did anything else occur?

A. Yes, I got taken off my job.

Q. When?

A. About three weeks ago, four weeks ago.

Q. Why?

A. I don't know; no reason.

Q. No reason given?
A. No.
Q. What job were you put on?
A. Put me out different departments. I work on the beanery payroll but different department.
Q. Same pay?
A. Same pay, yes.
Q. Same kind of work, or——
A. No, it's heavier work; more muscle than brains.
Q. The new job you have requires more muscle work?
A. Yes, more muscle than——
Q. Than the other job?
A. Than the other job.

Mr. Kleeb: Cross examine.

Cross examination.

By Mr. Reed:

Q. This new job that you have pays you just the same money?
A. Yes.
Q. Over 70 cents an hour, isn't it?
A. Yes.
Q. And you know that the man whose place you took there had an injured hand and he couldn't do the work, don't you?
A. That was another job, not that. I had this for a couple weeks and he is back on his job now, but shoved me out in different department altogether. It's in the shipping department—you work on bean-packing payroll but you work in different department.
[fol. 565] Q. Don't you think the company have a right to shift the men around where they need them?
A. Maybe they have. I don't see why they should shift me out there in different department.
Q. You didn't make any complaint when they shifted you, did you?
A. I have.
Q. Did you?
A. Yes.
Q. To whom?
A. To the grievance committee.

Q. To the grievance committee of the union?
A. Yes.
Q. But you didn't tell the foreman or anybody who changed you that you had any complaint?
A. No.
Q. You are very active in the union, aren't you?
A. Oh, part of the time.
Q. Now, this meeting that Locke had, you know that there was a claim that this paper had been stolen, don't you?
A. No, it wasn't stolen.
Q. I didn't ask you that. That's what they claimed, it had been stolen?
A. Yes, they claimed.
Q. And then Locke told them they hadn't any right to steal any papers?
A. They just destroyed when they found out what that is.
Q. You know that a lot of people thought it was stolen.
A. He thought a lot of things, I know that.
Q. What's that.
A. He thinks a lot of things.
Q. Locke thinks a lot of things?
A. Yes.
Q. We are not talking about what he thinks. You know a lot of people at that time though that paper had been stolen didn't they?
A. It was destroyed by girls, it wasn't stolen.
Q. Now you can answer my question. Didn't they claim it was stolen?
A. I don't know what they claimed, but they destroyed it.
Q. How do you know it was destroyed?
A. I seen them.
[fol. 566] Q. Who destroyed it?

Mr. Kleeb: I object.
Trial Examiner Walsh: Objection sustained.
Mr. Kleeb: I object to the witness answering who destroyed it; it is immaterial.
Trial Examiner Walsh: Sustained.
Mr. Reed: I don't think it's immaterial. This is the question of the speech that was supposed to have been made by the foreman about a paper that was lost or destroyed. The witness brought the matter up himself. Is he not permitted to say who destroyed it? He says he knows who destroyed it.

Mr. Kleeb: He said he saw it destroyed.

Mr. Reed: I don't know how anybody is going to meet the testimony unless he says who destroyed it.

By Trial Examiner Walsh:

Q. Do you know who destroyed it?

A. Some of the girls——

Q. Do you understand what I am asking you? Do you know who destroyed it?

A. One of them girls.

Q. Do you know who it was?

A. I don't know her name.

By Mr. Reed:

Q. Did you say at the meeting that you had seen the paper destroyed?

A. That was before the meeting, destroyed.

Q. You were at the meeting where they were talking about this paper?

A. Yes.

Q. Did you say at the meeting it was destroyed?

A. No, I didn't say at the meeting it was destroyed.

Q. You never told them there it was destroyed?

A. No.

Q. Were you a party to destroying it?

A. No.

Q. Did you tell them you destroyed it?

A. No.

Q. You were working actively for the union then, weren't you?

A. Yes, I were.

Q. And you know that Locke told them at this meeting they could belong to the A. F. of L. or association or anything else if they wanted to?

A. Yes, he said, but if you seen his face, he didn't mean [fol. 567] that.

Q. He didn't mean it?

A. Yes.

Q. That's what you meant by the looks he gave them. Is that what you meant when you said, after some looks?

A. Certainly.

Q. That's what you meant?

A. Yes.

Q. You could tell by his face he didn't mean it?
A. He didn't mean a thing what he read it off.
Q. Why do you say that? Have you any grievance against Mr. Locke?
A. No.
Q. You haven't had any trouble with him?
A. Only thing he took me off my job and try and shove me every place.
Q. You are not very friendly to him, then?
A. I have nothing to be friendly. I do my work any place I go.

Mr. Reed: That's all.
Mr. Kleeb: That's all.

(Witness excused.)

Mr. Kleeb: Maurice Shindler.

MAURICE SHINDLER, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination:

By Mr. Kleeb:

Q. You are Maurice Shindler?
A. Yes, sir.
Q. You live at 228 Green Street, Wilkinsburg?
A. Correct.
Q. At the time of the strike at the Pittsburgh Plant of the H. J. Heinz Company May 24th of this year, were you employed at that plant?
A. I was.
Q. In what department were you employed?
A. In the experimental engineering department.
Q. What was the nature of your work? What kind of work did you do?
A. Machine designing.
[fol. 568] I have a hesitation in speech, so if I am slow, you will understand.
Q. Very well. Are you a draftsman?
A. I am.

Q. Do you recall anything unusual happening at work on or about May 20th of this year? Do you? "Yes or no".

A. Yes. On the evening of May 20th, a Thursday, I worked overtime, seated myself at a table in the cafeteria. A few minutes later Mr. Hayes, assistant to Mr. Heinrich, sat down beside me, greeted me. A few moments after that four foremen sat down, and only two I can identify by name were Palivoda and Skerdich.

Q. Do you know how to spell Palivoda?

A. I have never seen the name spelled. I have heard others address him by that name, so I wouldn't venture to spell it.

Q. Do you know his first name?

A. I don't.

Q. You knew he was a foreman?

A. In my work I often had to go up in his department.

Q. What department?

A. The sweet pickle department.

Q. Did Mr. Skerdich——Do you know how to spell Mr. Skerdich's name?

A. The same holds true there. It is a name that is difficult to spell. I had contact with him several times. I happened to be designing some machinery for a new mill in Holland, Michigan, and it happened to be in his line, and I came in contact with him often asking for information on certain phases of the operations there.

Q. And what department is he foreman of?

A. Of the pickle department.

Q. How did you know others at the table were foremen although you didn't know their names?

A. I saw them in the shop having the uniform of a foreman. They didn't seem to be doing any manual labor, merely walking around, so I couldn't identify them other than to say I saw them in that capacity.

Q. Well, are the ordinary workmen in the factory allowed to eat at this place where you were eating?

A. No.

Q. Who were permitted to eat evenings at this particular place?

[fol. 569] A. Only foremen and the main office employees.

Q. About how many were seated at this table?

A. Five besides myself.

Q. Now, will you please relate what occurred at the table, what the conversation was, what you heard?

A. After being seated and greetings exchanged, Hayes said to Palivoda, "How did you make out?" Palivoda began to enumerate that he spoke to a certain girl, and she informed him that she had signed up with the outside union, wouldn't have anything to do with the inside union. He talked to her. He said the best he could. And he said, "Hayes, do you remember how she came and begged for a job, and the father also implores us to put her on, and now she shows her gratitude by joining the outside union." And the whole tone of the conversation was that Mary this or Molly this, "I saw her. She has joined the outside union. I have talked to her. I did the best I could. I couldn't do anything. Others I have neutralized. Others have paid their initiation fee."

And during the course of the conversation he mentioned that he had seen all of the 26 names on the list that Hayes gave him and nad talked to them. The whole picture as I could see it at the time was that Hayes had given him a list and he was to do everything he could to see that they joined the inside union, and that he had done the best he could, and they seemed to have discussed most of these cases at a previous gathering or meeting because practically all through the conversation first names were used with a few exceptions.

Q. The first names of whom?

A. Of the girls.

Q. Did the other foremen at the table also report to Mr. Hayes?

A. Yes. Mr. Skerdich also reported in the same vein.

Q. Did you overhear the other men talking to Hayes along the same lines about their department after these other men spoke about some ingratitudes that some of the men have shown, but it wasn't on such a pretentious scale as Skerdich and Palivoda.

Q. Was that conversation had throughout the meal?

A. Yes, that is, I didn't stay for the entire conversation. I had been there before they started, and I was pretty well finished before the conversation broke up, so I left.

[fol. 570] Q. Do you know Mr. Hargraves who works at the plant?

A. Yes.

Q. What job does he hold, if you know?

A. I understand he is the director of the company.

Q. Did you ever hear him or discuss with him or overhear him discuss the American Federation of Labor or the inside association, Heinz Employees Association?

A. I heard the following conversation. I want to point out that Mr. Hargraves speaks in a very loud voice, and this morning it seemed he was exceptionally loud at times. He approached one of the stenographers in the office and asked her to act as the—to take the minutes of a meeting of the company union, and pointing out that they need somebody. And she said that she didn't care to mix herself up in any troubles. "Oh," he said, "there isn't anything to be mixed up about." He said, "You don't have to be a member of the inside union. All it is is simply a meeting to talk over the question of the outside and inside union, and I would urge you to take it." Finally, after a number of minutes she said she absolutely wouldn't do it, and he began pointing out that this inside union, he has absolute proof it has been organized by Croatian Communists and that they are getting their orders from Moscow, and he hopes that she would not do anything to aid such a group. And she told him she isn't aiding anybody. And after a lengthy coaxing he left.

The following morning he met her as she was entering the time office building to punch in and he asked her if she still didn't want to serve at this meeting, and she said no. So he said, "That is all right. I found somebody else for the job."

Q. Which organization did he say was getting aid from Moscow?

A. The outside union.

Q. Did this conversation which you overheard occur before this dinner that the foremen spoke at, this luncheon, or dinner, table, or after?

A. That was before.

Q. Do you recall approximately how long before?

A. It was either two or three days before the first company union meeting at Carnegie Hall.

Mr. Kleeb: Cross-examine.

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Sup. Ct.

Vol. II

TRANSCRIPT OF RECORD

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OCTOBER TERM, 1940

No. 73

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 9, 1940.

CERTIORARI GRANTED JUNE 3, 1940.

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Cross-examination.

By Mr. Reed:

Q. Did you overhear any other conversations by any of [fol. 571] the officials about the union?

A. No.

Q. Just these two that you overheard?

A. Yes.

Q. The first one was at the dinner table in the dining room when Hayes was talking to these foremen?

A. In the cafeteria in the basement.

Q. In the cafeteria in the basement?

A. Yes.

Q. And the second one was when you heard Hargraves talking to the stenographer?

A. In the engineering department office.

Q. In the where?

A. In the engineering department office.

Q. Did he ask the stenographer in the engineering department office?

A. Yes, sir.

Q. What was her name?

A. Miss Friend?

Q. Miss Friend?

A. Yes.

Q. Do you know her first name?

A. Lillian.

Q. Now, you weren't a party to that conversation. You just overheard it, did you?

A. Yes, sir.

Q. Is that the only conversation you overheard?

A. That is the only conversations.

Q. Well, then, why did you testify that the next morning he met her at the office, at the time office building and asked her if she had decided to serve?

A. I misunderstood your question. I thought you meant if I heard him or any other official speak to anyone under any other auspices.

Q. Did you overhear this at the time office building the next morning?

A. I saw him speaking to her, and I asked her after she came down to the office the nature of the conversation.

Q. So that what you told us about what happened the next morning——

A. Yes.

Q. ——was what she told you; is that right?

A. Yes.

Q. And she told you that in the engineering office, did she?

A. Yes, sir.

[fol. 572] Q. Now, there are just these two occasions then when you overheard a conversation?

A. Correct.

Q. Were you a member of the union at that time?

A. No.

Q. You are now?

A. Yes, sir.

Q. Do you have any reason for remembering those conversations that you overheard at that time?

A. They were so obvious a plan to violate the Wagner Act that it rather impressed me.

Q. Yes. That is why you remembered it?

A. Yes.

Q. Now, Hargraves is not anybody who has the right to hire or fire anybody, is he?

A. No, but I know that on several occasions he happened to see the president of the union, Frank Novak, after leaving the locker room to go to his department by a route he thought he shouldn't have gone, and he very emphatically tried to order him to take the route he thought he should have gone. And he has and he always walked in the shop as though he had an awful lot of authority.

Q. You knew as a matter of fact, that he had no authority to hire or fire or supervise any men, didn't you?

A. But he had the power to go to Mr. Heinrich and report his findings.

Q. Well, anybody has that right to go to Mr. Heinrich, isn't that right?

A. Only a very few would take advantage of it.

Q. But all of them can if they want to?

A. Naturally.

Q. Yes. And now I come back to my question. You know that Hargraves is not any person who has the right to hire and fire, don't you?

A. I don't know that.

Q. You never heard of him hiring or firing anybody, did you?

A. At the same time I didn't know that he couldn't fire anybody, either.

Q. He doesn't have charge of any department or anything like that, has he?

A. He has had charge, understand, of the welfare work of the shop, and I think after all that is a sort of position in the sense, for instance, an employee alongside of me, his [fol. 573] wife happened to be sick, and he approached him and said that he heard she was sick and that he could have it arranged that she could go out to Mr. Muller's farm. So I would imagine if a person could do a thing of such character, he had some authority.

Q. Well, why are you arguing about it? Why don't you answer? Did you ever hear of him hiring or firing anybody?

A. As I said—I think I answered it when I said that I don't—I didn't interest myself then and I am not interested even now whether he could or not.

Q. Now, you know that Hargraves was a member himself of the Employees Association at first, wasn't he?

A. I don't know that.

Q. Did you ever hear anybody ask him to join or anything like that?

A. No.

Q. Well, if he was a member of the association, he had a right to try and get a stenographer for it, didn't he?

A. I suppose if he was a member, although I don't think very much of an organization that would have anybody in its membership who was so close to the heads of the shop.

Q. Well, you don't think much of the association, anyway?

A. Oh, no, absolutely not.

Q. Now, what was the nature of your work, the work you were doing?

A. I was a draftsman, designing machinery.

Q. That is, for new plants?

A. Yes, sir, and also old.

Q. I beg your pardon?

A. For old and new, both.

Q. Yes. But you were called upon only when there was

new machinery to be designed for an old plant or a new plant?

A. Correct.

Q. That was your job in the drafting department?

A. Correct.

Q. Were you on a salary?

A. Yes, sir.

Q. Did you think it was proper for yourself to belong to a union?

A. Absolutely.

[fol. 574] You didn't think that your work was professional work or close to the executives that you shouldn't belong to a union?

A. Personally, I consider—I don't consider a draftsman any better than a man in the shop. He may have a little bit more education, sometimes he makes somewhat more pay, but boiling it all down, he is a worker.

Q. Well, it is not a question of better, but it is a question of whether or not your interests are common with the interests of the workers?

A. I think that they absolutely are.

Q. What the wage scale in the plant is or how the grievances come up through the union or any of that does not concern you in your job, does it?

A. Absolutely, for the following reason. As the standard is raised by the unions, the standard of the draftsmen or the other office help as a rule are raised automatically proportionately.

Q. There are other engineers and draftmen hired by the Heinz Company?

A. Yes, sir.

Q. Do they belong to your union?

A. I don't know.

Q. Now, your work ceased after the election sometime, didn't it?

A. About three weeks afterwards.

Q. Yes, and you have not been employed there since?

A. No, I was fired.

Q. And you have been resentful about it, haven't you?

A. Somewhat. Would you be?

Q. Well, I don't know. It would depend on the circumstances. The work that you were working on was completed?

A. I should say not.

Q. When you——

A. They are still working on it. They laid off a draftsman from all the other branches of the engineering department and they haven't of the experimental engineering department laid off a man.

Q. You say there have not been other draftsmen laid off?

A. In the experimental engineering department. I want to point out it was divided up into three sections, and I am [fol. 575] surprised that Mr. Heinrich doesn't know it.

Q. Well, doesn't he?

A. The architectural, the experimental, and the mechanical.

Q. Don't you think Mr. Heinrich knows that?

A. I should think he ought to, and his statement stating that there was nobody else laid off.

Q. Well, what statement?

A. Would——

Q. What statement?

A. That you have just pointed out at his prompting.

Q. I haven't pointed anything out at his prompting.

A. Probably I misunderstood then.

Q. I guess you are guessing, then, aren't you?

A. Oh, I am not guessing.

Q. What do you know about the prompting from here over there? You can't hear anything, can you?

A. A little every now and then, I can hear a word.

Q. You are a pretty good eavesdropper, aren't you?

A. Fairly good.

Mr. Reed: That is all.

Mr. Kleeb: That is all.

Trial Examiner Walsh: That is all.

(Witness excused.)

Mr. Kleeb: May I have a ten minute recess, please?

Trial Examiner Walsh: 10 minute recess.

(Thereupon a short recess was had.)

Trial Examiner Walsh: The hearings will come to order.

Mr. Kleeb: Mr. Wilner.

J. ALFRED WILNER, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are J. Alfred Wilner?.
A. I am.
Q. You are an attorney at law?
A. I am.
[fol. 576] Q. Are you counsel for the Canning and Pickle Workers Local Union No. 325?
A. I have been since June 1, 1937.
Q. To the present time?
A. That's right.
Q. You were counsel, of course, at the time of the strike of that local, in May, of this year?
A. No, I was not, until June fi-st; the latter part of the strike.
Q. Oh, yes, June first. I am sorry.
The strike was in being at the time you became counsel?
A. That is correct, sir.
Q. Are you familiar with the circumstances surrounding the election held by the Sixth Region of the Labor Board, June 8th of this year?
A. I am.
Q. Were you party to the conferences at which the terms of that consent election were agreed upon?
A. I was.
Q. Will you state where those conferences took place and briefly, what occurred?
A. They occurred in the William Penn Hotel on Friday, June 4, 1937. Commissioner James F. Dewey, of the United States Department of Labor, and Clarence Moser, who is the head of the State Bureau of Mediation, I believe, of the State Department of Labor, called the conference in an attempt to end the strike in the Heinz plant.

We met, that is, a committee from the union met Mr. Dewey and Mr. Moser, and then we went to the William Penn Hotel, and we were in one room there; the Heinz Employees Association and their attorney, R. L. McDonald, were in still another room; and I believe the officials of the

Heinz Company and their attorneys were in another room in the hotel.

Mr. Dewey and Mr. Moser were shuttling back and forth from one room to another.

Oh, in addition to that, Mr. John Porter, counsel for the National Labor Relations Board, was present during some of the negotiations that day.

Some time in the afternoon Mr. Dewey had drawn up a stipulation and a memorandum of agreement under the terms of which there was to be a consent election with two names on the ballot: the Canning and Pickle Workers Local [fol. 577] Union No. 325 and the Heinz Employees Association.

Q. Mr. Wilner, do you personally know, prior to this time, what was preventing or precluding a consent election?

A. Well, I can only tell you what the union told me, and what I read in the newspapers, up until June 1. From June 1 I know that there was some argument about whether or not the name of the Heinz Employees Association should appear on the ballot in an election.

I believe the union took the position, that is prior to June 4th, that the Heinz Employees Association, the name of the Heinz Employees Association, that is, should not appear on the ballot, and that the ballot should be a Yes and No ballot; that, is with just one name on the ballot, the A. F. of L.

Q. I hand you a paper and ask you to look at it and state if you have ever seen a paper like that before, if you can identify it.

A. Yes, this was one copy of the memorandum of understanding which was drawn up by Mr. Dewey.

Q. What did that cover?

A. That covered the——

Q. What was the subject matter of the memorandum?

A. The subject matter was the strike, the means of ending the strike, namely, the election; it indicated what the company would do and also indicated who would hold the election, and, in addition, indicated what employees would be eligible to vote.

Q. In other words, this document is a memorandum of understanding covering the terms under which the consent election was to be held?

A. Yes.

Mr. Kleeb: I offer in evidence this document as Board's Exhibit 16.

Trial Examiner Walsh: It may be received.

(Thereupon the document above referred to was marked as Board's Exhibit No. 16 and received in evidence.)

By Mr. Kleeb:

Q. I hand you another paper, dated June 4, 1937. Can you identify it?

A. Yes.

This is another paper that was executed simultaneously with the memorandum of agreement. It was a stipulation [fol. 578] for a consent election. It also indicated that any parties who had filed affidavits before the Labor Relations Board were not prejudiced by reason of this election. In other words, that any charges or affidavits filed previously stood in full force and effect and were not waived by reason of this.

Mr. Reed: Just read it into the record.

The Witness: I would be glad to.

Mr. Kleeb: I would like to have it in evidence as an exhibit, and then read it.

Mr. Reed: I am making no objection. I don't want anybody to say what the contents are.

Mr. Kleeb: I will offer it in evidence as Board's exhibit 17. You know what it is?

Mr. Reed: I know what it is, yes.

(Thereupon the document above referred to was marked as Board's Exhibit No. 17 and received in evidence.)

Mr. Reed: This is very short. I would like to read it in. We don't have a copy of it, and it will appear in the transcript, that way.

"Stipulation

"It is understood and agreed that the election to be held for the employees of the Heinz Company on Tuesday, June 8, 1937, is a consent election as agreed upon between the parties in this stipulation.

"It is also understood and agreed that the holding of this election is without prejudice to the rights of any parties who may have filed affidavits before the National Labor Relations Board."

That's signed by Canning & Pickle Workers Union, by Frank Novak, H. J. Heinz Company, by H. N. Riley, and the Heinz Employees Association, by I. C. Benhett, and dated June 4, 1937.

Mr. Kleeb: The record may show this, but I would like to also point out that Board's exhibit 16 is also dated June 4, 1937.

Mr. Reed: Mr. Kleeb, may it not also be stipulated that whatever affidavits were before the Labor Board at that time were not supplied to the company and it didn't know what was referred to in that stipulation?

Mr. Kleeb: I can't so stipulate, because I wasn't at all [fol. 579] a party to these proceedings, and didn't know anything about this stipulation.

Mr. Reed: Will you find out, so that we can put it on tomorrow?

There is no doubt about the fact that we signed that without knowing any individual or anyobdy that might have filed an affidavit.

Mr. Kleeb: I will attempt to find that out and answer that question.

By Mr. Kleeb:

Q. Will you look at Board's exhibit 17, Mr. Wilner, and if you know, will you state again why that document was executed; what was the purpose of it, along with this memorandum of understanding, as you understand the stipulation?

A. Yes.

Mr. Reed: Now, I object to the witness saying what the purpose of the signing of the thing is. The paper speaks for itself. He may have his idea why it was signed and we may have a different idea.

Mr. Kleeb: All right. I think the witness can give his idea and understanding of what the purpose of it was.

Mr. Reed: The paper stands for what it stands for. His idea of the purpose of it doesn't make any difference.

Mr. Kleeb: That's right.

Trial Examiner Walsh: Overruled.

A. At the time there were some affidavits filed with the National Labor Relations Board. We wanted to make sure that the affidavits—we didn't waive whatever information

we had put before the National Labor Relations Board, and didn't waive any rights which we may have had prior to the election by consenting to this election.

By Mr. Kleeb:

Q. With reference to rights as to what?

A. Making complaints.

Q. With reference to what?

A. And with reference to the Heinz Employees Association and any acts on the part of the H. J. Heinz Company which we thought were against the rights given the union under the National Labor Relations Act.

Mr. Reed: I object to that and move to strike it out. The stipulation is signed by the Heinz Company; they don't know anything about what's in these affidavits. There- [fol. 580] fore, any reservation in the mind of counsel for the union as to what they were reserving or saving by it hasn't anything to do with it.

The stipulation stands for whatever it says. Those affidavits might have been discrimination cases, might have been a man claimed he had been discharged and wanted reinstatement, or it might have been a charge against the association, but when you sign a paper and you don't know what the affidavits are, you have got to be guided by the paper only, not what Mr. Wilner had in his mind.

Mr. Kleeb: If the Trial Examiner please, I think the record does disclose that there was a charge filed which is in evidence by this Canning & Pickle Workers Union on May 27th of this year, a charge filed under section 8, subsections 1 and 2, of the Act. It's part of the pleadings.

Mr. Reed: That has nothing to do with what the company knew at the time it signed this stipulation. The company didn't know what was on file.

The Witness: Maybe I could clear this up.

Mr. Kleeb: May the witness——

I suppose there is a motion to strike, is there not?

Mr. Reed: Yes.

The Witness: I don't want to volunteer any testimony.

Trial Examiner Walsh: How can you clear it up?

The Witness: Well, at that time there was a discussion as to this particular thing and the company knew, I mean, it was freely discussed by all the parties there, the fact that there were certain charges pending before the National

Labor Relations Board, and I made the point, on behalf of the union, we would not enter into a consent election if we would then be confronted with a situation later on wherein the company could say, "Well, you agreed to an election on June 4th and that wipes everything off prior to that time," and that was the reason we insisted on the stipulation being signed, so that it would make clear anything that had gone on before that time was not wiped off the books, so to speak.

Trial Examiner Walsh: Objection overruled.

The Witness: And I think Mr. Reed and the company understood that.

By Mr. Kleeb:

Q. Referring again to Board's exhibit 16, Mr. Wilner, [fol. 581] paragraph 4 of the exhibit reads:

"The company agrees to recognize the organization receiving the majority of the eligible votes cast as the exclusive bargaining agency, and will, within 10 days after announcement of election results, commence negotiations for the purpose of reaching an agreement affecting wages, hours, and working conditions."

Were you any party to arriving at the wording of that clause, and, if so, what part did you have in it?

A. This agreement was drawn, as far as I know, by Mr. Dewey. When this particular paragraph was presented to us, I asked that the word "written" be inserted before the word "agreement," so that it would read

"after announcement of election results, commence negotiations for the purpose of reaching a written agreement affecting wages, hours, and working conditions."

Q. And was there any reason given by anyone why that was not included?

A. Well, Mr. Reed was there at the time and he said that on behalf of the company he did not want the word "written" inserted in that paragraph for the reason that there might not be a meeting of the minds and, if the word "written" were inserted, that would force the company to enter into a written contract whether or not there was a meeting of the minds, and he further stated that he was not taking the position that the company would

refuse to sign a written contract, but that they didn't want to be placed in a position of having to sign something when they might not reach an agreement.

Q. Was it your understanding it was a bilateral agreement or unilateral agreement?

Mr. Reed: This is objected to. It doesn't matter what his understanding of the word "agreement" means. Counsel's opinion has nothing to do with it.

Mr. Kleeb: I think it is relevant whether this witness, at the time of this memorandum of understanding, when it was signed, what he understood the word "agreement" to mean. There are unilateral statements of policy and bi-[fol. 582] lateral statements of policy and bilateral agreements. This says "agreement."

The witness testified he wanted a written agreement. It could still be a written unilateral agreement. I think the witness could still understand and state whether it was his understanding that the word "written" meant a bilateral trade agreement.

Trial Examiner Walsh: It will not bind the Board to offer a certain illumination as to the atmosphere in which this discussion was carried on. I mention this; ordinarily I wouldn't give any support to the ruling I intend to make, but it may come up again.

I know the Board and I will be assisted materially to know what the atmosphere was insofar as it can be revealed by the participants in this conference, without any prejudice to the interpretation of the agreement as it stands in written form, so I will overrule that objection.

The Witness: Could I have the question read?

(Previous question read by the Reporter.)

(The question was read as above recorded.)

A. My understanding of it was that it was due to be a bi-lateral written agreement.

Q. And that agreement provided when the election should be held?

A. Yes, it did. It provided that it was to be held on Tuesday, June the 8th.

Q. I now refer you to the second paragraph on the bottom of Board's Exhibit 16. It says, "All production and maintenance employees, including storage and warehouse

men, except foremen, assistant foremen, salaried employees, and office help, shall be eligible to vote."

The words "excluding storage and warehouse men" in the exhibit are in ink. The remainder of the sentence which I read is typewritten. Will you explain that, please, if you know?

A. Yes. At first the memorandum was drawn up without, of course, including the words which are above the line in ink. After it was drawn up somebody—I don't recall who—brought up the question of storage and warehouse men, and Mr. John Porter, counsel for the Labor Board, inserted those words in his handwriting.

Q. As far as you know, the ink writing on the Board's [fol. 583] exhibit is in the handwriting of Mr. John Porter?

A. That is correct, I recall his writing it.

Q. So that at the time that this agreement was executed, the unit, the voting unit was that unit at this time, June 4th?

A. That is right. I might add that there was one change or one addition that did not appear on the contract itself, but that was by mutual agreement between the Heinz Employees Association counsel and their committee and our committee.

Q. Was that subsequent to this agreement?

A. Subsequent, and it did not appear on this.

Q. Will you please state what the change was?

A. Yes. It was the addition of inside truck drivers. We had orally agreed that inside truck drivers should be eligible to vote, but that outside truck drivers should not be eligible to vote.

Q. I would like to refer you to Board's Exhibit 1, that part of the exhibit which is the Board's complaint. I will refer you to paragraph 4. Paragraph 4 says, "All of the employees at the Pittsburgh Plant of the respondent excluding foremen, assistant foremen, salaried employees, office help, and outside truck drivers constitute a unit appropriate for the purpose of collective bargaining" et cetera.

I wish to ask you if that inclusion and exclusion of people is the same as the unit of those eligible to vote at the June 8th election of the board?

A. That is correct, sir.

Mr. Kleeb: If the Trial Examiner please, as was admitted in the answer, the vote was held, and subject to any correction of figures, counsel for the respondent and the Board, wish to stipulate, subject to that correction, that the result was this:

Votes cast, 1930.
For the canning and pickle workers, Local No. 325, 1,079.
For the Heinz Employees Association, 803.
Void, 3.
Challenged, 45.
Total, 1930.

By Mr. Kleeb:

Q. Following the election, June 8th of this year, conducted by this regional board were you, as counsel for the union, present at the various meetings and conferences the union committee had with the respondent's representatives?

[fol. 584] A. I believe I was at every one of them.

Q. Do you recall when the first conference was held and where and if so, please state what occurred?

A. My recollection was that the first conference was held on Thursday, June 17th, 1937, in the Heinz Auditorium Building. At that time the union committee met with Mr. Riley and Mr. Shinabarger, and I believe there was another gentleman there by the name of McCaffery, or something like that.

A contract was presented to the committee representing the Heinz Company, and we began the seconds of that contract.

(Thereupon the document above referred to was marked as Board's Exhibit No. 18 for identification.)

By Mr. Kleeb:

Q. Can you name any of the employees of the company who were present?

A. Of the company?

Q. Of the employees of the company who were members of the union on the union grievance committee?

A. Yes. As I recall it—Do you want to restrict that to employees of the company all of those who negotiated for and on behalf of the union?

Q. For the union, yes. The latter.

A. I believe Mr. Kracik, the international representative, was at the first meeting, Mr. Anthony Tasker, the business agent, Mr. Frank Novak, the president of the Local, Mr. Robert Steinmetz, Mr. Chester Gutowsky, John Koontz, and I believe Mildred Novak.

Q. I show you Board's Exhibit 18 for identification, and ask you if that is a copy of the contract that was presented to the company on June 17th?

A. It is.

Q. In this contract which you have identified, there are some ink notations. Were they on the contract at the time you presented it?

A. You mean when I first presented it on June 17?

Q. Yes.

A. They were not.

Q. Were those inked pages or additions made during various conferences thereafter?

A. They were. That copy which you hold in your hand was the copy which I retained and which was a duplicate of the one given to Mr. Riley.

In discussing this thing we went over paragraph by para-
[fol. 585] graph, and Mr. Riley suggested certain changes. We discussed that, and we agreed to certain changes, and I made certain notations in line with that.

Q. And that explains these ink notations?

A. It does, sir.

Mr. Kleeb: I offer it in evidence.

Mr. Reed: Object to it. I don't see that a preliminary draft of a contract that was used in the various meetings has anything to do with this case at all. When they got through negotiating after a long period of time, they had agreed upon certain things. That is material. But how they reached that point, what notes Wilner put on his copy or what notes Riley put on his copy hasn't anything to do with this case at all. The question here is whether or not the company was bound to make a written agreement, and how they reached their final agreement isn't material at all. It is just going to clutter this record with your draft and our draft. Mr. Shinabarger has a draft, and somebody else has a draft, and everybody have their notes on it.

Now, do all of those things go into this record? It is not material at all.

Mr. Kleeb: If the Trial Examiner please, I think it is material for this reason. The testimony so far has indicated that the only objection to a written agreement, bilateral trade agreement, according to this witness, was Mr. Reed's statement that it would not bind the company to sign a written agreement or have a written agreement in advance of negotiating the terms of one. That was the only reason that memo for the consent election did not contain such a stipulation.

The record will later disclose that for meeting after meeting the company representatives met with the union representatives and discussed this agreement, used it as a guide, being a bilateral, two-party agreement, discussed its terms, and its paragraphs, and of a sudden, decided it would not sign a bilateral trade agreement. "We will give you a statement of policy."

And I think the agreement which they used is a basis for negotiation for meeting after meeting and should be in this record and is relevant to show that they had no objection to the bilateral trade agreement, and all of a sudden changed their policy for no reason.

Trial Examiner Walsh: The objection is overruled. It may be received.

[fol. 586] (The document heretofore marked "Board's Exhibit No. 18" for identification, was received in evidence.)

Mr. Reed: The Examiner has in mind that this contains the attorney's notes?

Trial Examiner Walsh: That is right. The record has it very clearly that this is the attorney's copy on which his notes have been entered in ink.

Mr. Kleeb: May I go off the record, please?

Mr. Reed: I object to your going off the record. Now, you are getting to a position here what the attorney said and what somebody else said. Now, if you have anything to say about that, let's say it right on the record.

This is the most unusual kind of evidence that I have ever encountered, and I don't want any remarks made about it to the Examiner that are not on the record.

Mr. Kleeb: I believe I have a right to ask to go off the record, Mr. Reed.

Mr. Reed: Well, I object to it. I have a right to object, haven't I?

Mr. Kleeb: Yes, sir.

Trial Examiner Walsh: What do you wish to go off the record for?

Mr. Kleeb: I merely was going to for the purpose of clarifying the record offer a copy of an exhibit as 18, just a copy of the typewriting along with the copy with the ink on it, so that there would be a proper understanding as to it.

Trial Examiner Walsh: An original copy without the ink notations, you mean?

Mr. Kleeb: It is a copy of this without the ink on it. I was going to offer it as part of this exhibit.

Mr. Reed: Well, then, are you going to offer the ink as another part?

Trial Examiner Walsh: We might as well have that on the record, Mr. Kleeb.

Mr. Kleeb: Well, I will make the offer, then. I have in my possession a typewritten coppy of this agreement, a copy not containing the ink notations. I am perfectly willing to make an off of that copy as Board's Exhibit 18-A and make it a part of Board's Exhibit 18 so you will have two contracts, one without the ink on it and one with the ink on it.

Trial Examiner Walsh: Any objection?

Mr. Reed: Well, he says he is willing to offer it. I can't [fol. 587] object to that.

Mr. Kleeb: I will offer it. I will offer it, Mr. Reed.

Mr. Reed: I object to it on the same grounds that I objected to the other and because it is only part of what Mr. Wilner offered in evidence.

Trial Examiner Walsh: It may be received. Objection overruled.

(Thereupon the document above referred to was marked as Board's Exhibit No. 18-A for identification and was received in evidence.)

By Mr. Kleeb:

Q. You testified, Mr. Wilner, that this contract which you identified was presented at that first conference?

A. That is correct.

Q. Can you state briefly what was discussed at that conference?

A. I recall——

Mr. Reed: This is objected to, if the Court please. The negotiations by which these parties finally reached an agreement of some kind hasn't anything to do with the charge of this case, which is that they did not make a written agreement. Now, we are not negotiating this agreement at this time. There was one arrived at that was satisfactory to both sides. That is where this line of proof ought to start and not go through all the negotiating conferences.

Mr. Kleeb: If the Trial Examiner please, I am willing to have a ruling on that. I agree with Mr. Reed that the negotiations concluded in a labor bulletin or labor policy bulletin issued by the company to its employees sometime in the middle of August—negotiations began June, around June 17th, 1937, following the election, and after spasmodic and periodic meetings run in August, there was posted, I believe on the bulletin board in the middle of August a unilateral statement of policy, a copy of which I intend to offer in evidence. After that time there was a meeting and discussion of the contract. Then there was a change of policy, and then the company gave this unilateral contract.

I intend to show the series of meetings and what took place at them, briefly, and when this change of policy occurred, to show what led up to this unilateral labor rela- [fol. 588] tions bulleting, at it is called.

Trial Examiner Walsh: The objection is overruled. You may go on.

The Witness: I have forgotten the question.

By Mr. Kleeb:

Q. The question was, Mr. Wilner, will you relate briefly what took place at the July 17th meeting when the contract was presented?

A. As I stated, we began to go over the contract paragraph by paragraph. I recall very distinctly that Mr. Riley objected to the phrase "or its successor" in the first paragraph of that contract. We discussed that phase of it, and then we agreed to strike out the three words "or its successor." There was no objection to any other part of that introductory paragraph.

Mr. Reed: I object to that move to strike it out. If there was no objection doesn't mean anything in this case. Do you mean to say that Mr. Riley said the rest of it is all right

or that the company said it or the Heinz Company adopted it?

We are just going to get nowhere when one attorney is going to say that in his mind there was no objection to this, that, or the other.

The Witness: What I said, Mr. Reed, was that there was no objection made about any of the phrasing of the rest of this paragraph. The only objection made was to the three words. I don't know what was in Mr. Riley's mind—I agree with you in that—but I do know what he said.

Mr. Reed: Well, then, testify to what he said.

The Witness: I did.

Mr. Reed: I would like to be heard.

Trial Examiner Walsh: What does the record show as the witness' answer?

(The record was read.)

Trial Examiner Walsh: It is only on the second statement that you got in the word "made".

The Witness: I would be willing to amend the statement.

Mr. Reed: I would like to state our position about that. We are launching on something that is going to take weeks. There were conferences after conferences in which we brought up something, and they brought up something, and they brought up something, and we discussed this and they discussed that. We have got a book full of it with every detail [fol. 589] of what was said and done at those conferences. Now, what you are doing is you are permitting the lawyer who drew his own contract and brought it into a meeting to start through it paragraph by paragraph and because of the fact that a particular thing wasn't said when that paragraph was read, he is testifying that that was agreed to. Now, everybody knows that an agreement isn't made that way. You sit down and negotiate, you pass a point and you may bring it up in a different form, and Mr. Wilner knows and Mr. Kleeb knows that you don't get a contract in a conference by his reading his verison and somebody objecting to this or that.

Now, are we going to try all of these conferences? We are prepared, if you want to. We have got every word that was said in all of them, but that isn't this case. That is not involved in this case. We are simply making a record here and that can't possibly be material.

Mr. Kleeb: In a good bit of Mr. Reed's statement I concur. I also agree that conference after conference generally is necessary to reach an agreement, and I admit that conference after conference was held.

I don't intend to go through paragraph upon paragraph of this contract and state what was said about it, but I do want to show that the contract in these various meetings, up to a certain point, this very contract, which is drawn as a bilateral contract, was used as the basis of negotiation. That is all I intend to show, and I intended to show the change of policy on the part of the company at a certain point, when they decided they were not going to sign a bilateral trade agreement or sign any other kind of an agreement.

Trial Examiner Walsh: How much, Mr. Kleeb, do you intend to go into the understandings of the witness in regard to these points that were changed, or points that were not changed, in this original draft?

Mr. Kleeb: Well, I can answer that by saying very little.

Trial Examiner Walsh: This is testimony, then, in regard to the charge recited in paragraph 8, subsection 5, isn't it?

Mr. Kleeb: Yes, sir.

Trial Examiner Walsh: It isn't worded as counsel recalls it in terms of arriving at an agreement or a written agree-[fol. 590] ment, but collective bargaining in good faith?

Mr. Kleeb: Yes.

Trial Examiner Walsh: Something like that. And it is relevant to that which you are examining into, the steps of this particular conference?

Mr. Kleeb: Yes. I certainly believe the attitude and demeanor of a company in its representatives at meetings, so-called collective-bargaining meetings, is relevant as to whether they are bargaining as contemplated by this law or whether they are refusing to bargain collectively as contemplated by this law.

Now, the mere fact that they refuse to sign a contract, that alone is material. Certainly it is material whether the signing of a bilateral trade agreement is collective bargaining or not, but it is also material to the attitude of the representatives of the company, as to what attitude they took toward the representatives of the union in the so-called collective-bargaining meetings.

Trial Examiner Walsh: That is what you are interested in in these questions?

Mr. Kleeb: Yes, sir.

Trial Examiner Walsh: Well, then, the objection, as I understand it, and I think I got the full measure of your objection, Mr. Reed, which I will keep in mind, will be overruled at this time.

By Mr. Kleeb:

Q. I believe you started to state what was done in brief at this first conference. Will you continue to tell us?

A. As a matter of fact, as I recall it, we discussed—we read over the agreement, clause by clause, and Mr. Riley asked me questions about what certain clauses meant, and he raised certain objections to various things, wanted to know, for instance, why this agreement was different than the one which had previously been submitted by Mr. Kracik before the strike. I don't recall that we made any real progress in the first meeting.

Q. Mr. Wilner, to avoid unnecessary questioning, and so forth, in that you attended these various conferences, will you relate or narrate in a chronological order as best you recollect what occurred after this first meeting?

Mr. Reed: My objection, of course, goes to all of this line of testimony.

Trial Examiner Walsh: We will make that clear in the [fol. 591] record. The objection is comprehensive.

A. We met on, I believe, June the 17th. I believe that was the first meeting. And I believe we met the next day, or the next afternoon, also, in the Heinz Auditorium, as I recall it. And then we met the following day, which was Saturday, I believe. And at that time I think we changed over to the administration building.

In these three meetings we went over these various clauses again. I recall that there was no further discussion of this first paragraph in those meetings. The thing that we did, when we couldn't agree on something, we would ordinarily pass it and go to another paragraph, in an attempt to get to some agreement.

We argued the terms of this contract pro and con, the attitude of the company being, How could we justify the wage rate we asked?

And they asked us to submit figures of what others were receiving in the industry, and in comparable industries. That was gone into during some of the negotiations. We

presented some figures and the company's representatives presented figures.

I believe Mr. Riley indicated that the Heinz Company was paying higher wages than most of the others in their particular industry. I believe he said that if they raised their wages to the point that we asked, that they wouldn't be able to compete with their competitors. He indicated that their product was higher priced at that time than most of their competitors, although he admitted, of course, that they had higher quality.

I believe that we brought out the point that the question involved here was the unit cost of labor, and that the cost of the Heinz Company might have been less than that of their competitors, and that we asked the company to present us figures on what the unit cost of labor was. And then perhaps we could arrive at some decision as to whether or not a raise in pay to the employees would put the Heinz Company at a disadvantage with their competitors. Well, that information was not given us and we, as we said, argued back and forth mostly on the question of wage rate.

We asked for a 20 per cent increase with a 52 cent minimum for female help and a 62½ cent minimum for male help.

Trial Examiner Walsh: May I interrupt?

The Witness: Yes.

[fol. 592] Trial Examiner Walsh: Was this proposed wage increase a general blanket increase, or had you broken it down into rates applying to different kinds of work?

The Witness: No, it was a blanket increase, Mr. Examiner, of 20 per cent, with these minimums established, and where the 20 per cent would exceed the minimum, then there was to be paid; where the 20 per cent would not reach the minimum, then the minimum was to be paid. That is what we requested. The company did not agree to that at any time.

We met then, I believe, also on the 22nd of June, and my recollection is the 24th, and I believe, the 26th. We weren't making much progress. One meeting was practically a repetition of that which preceded it, although we did make certain allowances as the meetings went along. The company offered the one proposition of a 10 per cent increase with a 45 cent minimum for women, and I believe a 60 and ½ cent minimum for men. We asked for more, and among

other reasons stated that that was the arrangement which the company had made or was reported to have made with the Heinz Employees Association during the strike.

Q. What arrangements do you mean?

A. There had been a full page advertisement in the Pittsburgh newspapers during the strike which stated that the H. J. Heinz Company had entered into an agreement with the Heinz Employees Association wherein they gave them a 10 per cent increase.

Q. May I interrupt a minute?

A. Yes.

Q. Referring you to Board's Exhibit 14, I ask you if that is the full page ad to which you refer?

A. I believe that that is, yes, sir.

Q. Why was that one of the reasons why you objected to the 10 per cent offer?

A. We felt that that meant no increase at all, and because it had been previously given to this Employees Association, and we believed further that the company was intent on giving us as little—oh, strike that. That the company wanted give us less than they gave the Heinz Association, or, at any rate, not any more. And our people felt that after the strike, that since they had the strike to get what they thought they were entitled to, and had to go [fol. 593] through an election, that they were entitled to more than the 10 per cent granted to this Employees Association.

Q. Up to this time, which you say was about July 23rd, 24th—or, June, I mean.

A. June. We had about six or seven meetings, I would say prior to June the 28th, and I believe on June 24th or 26th. We weren't getting very far on the thing, and the proposition had been made to us all the time that we had to sell Mr. Riley and Mr. Shinabarger so that they, in turn, could go back and sell the directors the proposition that we wanted. And we were told that we weren't very good salesmen.

Q. Was the indication up to this time that Riley and Shinabarger had authority or no authority to act?

A. No; they indicated up to this point that they were acting as agents for the Board of Directors, and that they had to go back and sell anything that we wanted to the Board of directors.

Q. They were the only two up to this time in on these conferences for the company as spokesmen?

A. Well, Mr. Riley, Mr. Shinabarger, and Mrs. McCaffery, and the second or third meeting, I believe Mr. Laughlin, one of the company's attorneys appeared, and then at the next meeting Mr. Ebbert and Mr. Laughlin, and thereafter Mr. Ebbert, another one of the attorneys, appeared in the negotiations.

Q. Did any other official of the company ever appear in the negotiations?

A. Not prior to June 28th, as I recall. At one of the meetings prior to June 28th, I suggested that since Mr. Riley was unable to sell the directors, as he told us, on the proposition, that maybe it would be a good thing to have Mr. Howard Heinz or one of the other directors of the company meet with us, or that we would meet with the entire board. Mr. Riley said that he thought that was a good idea, and then Mr. Anderson, an executive of the company and a member of the Board of directors, met with us, I believe, on June the 28th.

Q. Do you know Mr. Anderson's first name?

A. I am not positive about it; no, sir.

Q. Can you relate briefly what activity Mr. Anderson took in the meeting of June 28th, if anything, or what he said, if anything?

A. Yes. At the beginning of the meeting, I believe—well, I know that Father Rice was present and aiding us in our negotiations.

[fol. 594] Q. Who was Father Rice?

A. Father Rice is a clergyman who was interested in this situation and who——

Q. Go ahead.

A. And who, I believe, was friendly to some of the members of the union and who sat in some of the conferences with us.

At the beginning of that particular conference, I believe that Father Rice and Mr. Anderson joked about what parts of Ireland they came from, or something like that, and he didn't say—that is, Mr. Anderson, as I recall it, didn't say anything else until the very conclusion of the meeting, when I directly asked him what he thought about the situation inasmuch as we were in practically the same position as we had been in all the meetings up to that point. And

Mr. Anderson, I believe, said that it appears that this was just a re-hash of what he had heard before from Mr. Riley, that as he saw the proposition, we could take the 10 per cent, that is, or leave it. And then he stood up and walked out of the room.

Q. Was he smiling when he said it or was he mad, or laughing, or what; what was your impression?

A. He wasn't smiling. He seemed indignant. There was a sort of furor and I said, "Does this mean that negotiations are broken off?"

And then Mr. Riley said, "Well, if they are, then you are breaking them."

And I said, "We are not breaking off negotiations. We are interested in continuing them until an agreement could be reached."

Then they walked out of the room, and Mr. Riley and, I believe,—Oh, just a moment. Mr. Anderson also said something else. He said, before he walked out, that the board of directors backed up anything that Mr. Riley and Mr. Shinabarger done, and that they had full faith and confidence in them, and that Mr. Riley and Mr. Shinabarger had full authority to act for the board of directors.

Q. Did you offer any suggestions for settling this situation?

A. After Mr. Anderson walked out I suggested that it might be a good idea to call in some mediators, in the hopes of getting us together on something that would be mutually satisfactory, inasmuch as it appeared, after all [fol. 595] these meetings, that we couldn't come to an agreement.

Q. How was that suggestion met?

A. Well, it apparently wasn't well received.

Q. Why do you say that?

A. Well, the company didn't agree to it. However, I did call Mr. Flail, of the State Bureau of Mediation, and also Commissioner Dewey, of the Federal Board. I had no conference with the company about mediation at that time, on the next day, that is the 29th, but Mr. Flail told me he did. Of course, that would be hearsay. I don't know what actually took place, except what he told me.

Q. Up to this time, Mr. Wilner, were you and the other union representatives, and the company representatives,

using the contact which you have in your hand, Board's exhibit 18, as the basis for your negotiations?

A. We were, at all times.

Q. Did any representative of the company at any time through the June 28th meeting say anything or give any indication as to whether or not the company would refuse to sign a bilateral written agreement?

A. There was nothing said at any time up to that indicating a refusal on the part of the company to sign a bilateral agreement, nor was there any objection to the form of this agreement, with the exception of the words "or its successors," as I have testified. There was no objection made.

Q. Following this June 28th meeting, will you continue to narrate what happened, as best you can recollect?

A. I called Mr. Flail and Mr. Dewey, as I testified, and they got in touch with the company, as I was informed on the question of mediation. Mr. Flail then informed me that the company was not interested in mediation. However, we did arrange for a meeting with the company, I believe, on July first. We actually met with them at that time and at that time we agreed we would take the 10 percent offered by the company, with the 45-cent minimum, and the 68½ minimum for men, and various other provisions which we had mutually agreed upon. At that meeting, I should say, we had come to substantial agreement on the terms, roughly, on the terms; that is, it had not been drawn up in final form, but there was a meeting of the minds on the July first meeting, as I recollect.

[fol. 596] Trial Examiner Walsh: I want to ask a question before you get away from this particular point.

By Trial Examiner Walsh:

Q. A little while ago you mentioned the association, employees' association, had secured a 10 percent increase. Had they secured it in the sense that all employees who were members of the association were receiving it?

A. No. The amount had never been paid, because the employees had not gone back to work until after the election was held, and, I believe, it was mutually agreed by us that no increases would be paid until we had agreed on some proposition; that is, the company and the union; so, actually,

the employees have not received the benefit of it, until this contract was——

By Mr. Kleeb:

Q. The wage agreement that was agreed upon on this meeting of July first, that amounted to just this 10 percent?

A. That's right, with the 45-cent minimum, which was slightly more than 10 percent for the women, because, I believe, some of them were getting 40 cents an hour, so that would have been slightly more than that, for them.

Q. As you say, the terms were generally agreed upon. What was then agreed to be done with reference to those terms?

A. It was agreed, as I recall it, that the thing would be put in final form.

Q. Was anybody designated to do that?

A. I believe Mr. Ebbert and I were to get that into shape.

Q. Was that ever done? State what happened.

A. After we left the meeting on that particular afternoon I was informed that a representative of the company came to see Mr. Kracik, the international representative of the union, and told him at that time that the company would not sign any agreement with the union, and that was the first time that had been said, in all these negotiations.

Q. What followed that? By the way, what were you informed when that occurred, by Mr. Kracik?

A. I understood that occurred some time after, within the next half hour or hour, after that particular meeting broke up.

Q. Of July first?

A. July first, that's right.

[fol. 597] Q. Did you meet again with the company?

A. Yes, I believe we met the next day and at that time we protested and said that it was our understanding the agreement called for a written agreement, that we didn't think that this was true collective bargaining or that the company was bargaining in good faith, that after we had successively brought down all the things we had wanted, and agreed to what the company wanted, and, after that meeting of the minds, then the company, for the first time, had said they wouldn't enter into an agreement with us.

We thought they had violated both the letter and spirit

of the Wagner Labor Board, and so on, and the representatives of the company said, "Well, that's our policy, and we don't intend to do any more than that, and we don't believe, under the law, we are required to."

And the situation was that the—at least, the inference was that we could either take that or we could leave it; go on strike or take any other remedies we might have.

Q. Then this meeting of July 2nd was the first time, in general conference, you were told by the company?

A. You mean where the company, where the question of not signing the contract was discussed?

Q. Yes.

A. That is correct, sir.

Q. After the union representatives learned this, generally at this meeting of July 2nd, that the company would sign no written contract, what was decided to be done; what was agreed upon?

A. We argued a lot about it, but that was final. There wasn't going to be any written contract signed by both parties. There was going to be some sort of a statement of policy, and it was agreed, then, Mr. Ebbert, attorney for the company, and I, would draw up some sort of a memorandum of agreement, or statement, or something of that sort, in which we would embody the terms of the agreement or the terms of the meeting of the minds that had occurred on July 2nd.

Q. I show you a letter. Can you identify it?

A. Yes. May I saw something before I do this?

Q. Certainly.

A. Mr. Ebbert and I agreed something would be drawn up, and it was agreed between him and me he would draw up a rough form that he and I would go over and try to [fol. 598] have it state exactly what had been agreed upon.

Q. And did the two of you discuss that after the July 2nd meeting?

A. Yes, we did.

Q. And when was anything put in any form?

A. On July 7th Mr. Ebbert sent a statement with this letter which you have handed to me, and in which he wanted me to make some notes or suggestions on that.

Q. The statement drawn by Mr. Ebbert was enclosed with that letter?

A. It was enclosed with that letter, sir.

Mr. Kleeb: There is no objection to my reading the letter into the record.

"Dear Wilner:

"Will you kindly check over the enclosed statement and make a note of any suggestions you may have?

"I am leaving the office and will not be back until tomorrow morning. Then I will 'phone you.

"D. W. E."

And the name of "Donald W. Ebbert" appears on the letterhead. The letter is dated July 7, 1937.

Q. Why do you not have that stipulation, sent to you?

A. There was only one copy that was sent to me.

Q. What did you do with it?

A. I made a few notations and returned it to Mr. Ebbert.

Q. Then what happened, following that?

A. We met again and then, once or twice. I don't recall, and then on, I believe, the 12th, Mr. Ebbert drew up still another memorandum.

Q. Due to what? Why was another one drawn?

A. I wanted certain changes made in the first one, and the next one more nearly corresponded to what we had in mind.

Q. I hand you a sheaf of papers, consisting of nine sheets, typewritten sheets. Can you identity that, Mr. Wilner?

A. Yes. This is a draft of the notice made up by Mr. Ebbert, which was dated July 12th, and which he turned [fol. 599] over to me so that we could discuss it and make any changes. I did go over it with Mr. Ebbert, and then we had a meeting in this office on, I believe, July 14th, at which Mr. Shinabarger, Mr. Riley, as I recall it, were present, and, I believe, Mr. Tasker and Mr. Call and I represented the union.

Q. Is that Mr. Call one of the representatives?

A. He is an international representative. At that time, that is, on the 14th, we went over this statement and again we agreed on certain changes, and made notations of those which is on this copy, at that time.

Q. So that the ink notations on that sheaf of papers I gave you were your notations?

A. That's right.

Q. And they were made in the conference in the presence of those you mentioned?

A. That's right, on July 14th. Then the understanding, when we left that conference, was that Mr. Ebbert would draw up the statement as finally agreed upon that afternoon, and that he would send me a copy for my records, and that it would be posted upon the bulletin board of the H. J. Heinz Company the next morning, that is, July 15th, because we brought out that there had been much anxiety on the part of the employees over there because of the fact that no agreement had been signed or that nothing had been posted on the bulletin board to indicate that some agreement had been reached.

Mr. Kleeb: I would like, at this time, to offer in evidence the draft identified by the witness of this stipulation or statement drawn up by Mr. Ebbert July the 12th, with, of course, the ink notations on it as explained.

Mr. Reed: Same objection we made to the other; It's an intermediate stage of negotiations, and not the final stage.

Trial Examiner Walsh: Objection overruled. It may be received in evidence.

(Thereupon the document above referred to was marked as Board's Exhibit No. 19 and received in evidence.)

A. I might add that this was substantially what had been agreed upon in the general meeting on July the first and second, general meeting.

By Mr. Kleeb:

Q. Did you receive from Mr. Ebbert a copy of the state-
[fol. 600] ment which he agreed to have typed?

A. I did. In the mail the next morning I received a copy of the final draft, which had been agreed upon by all the parties.

Q. I show you a sheaf of papers clipped together, consisting of four typewritten pages, and ask you if that is the draft you received from Mr. Ebbert.

A. That is, sir.

Mr. Kleeb: I offer it as Board's exhibit 20.

Mr. Reed: No objection.

Mr. Bostwick: Wait. That is not the——.

Mr. Reed: Wait a minute; pardon me.

Mr. Bostwick: We disagree about that being the final one, Mr. Kleeb.

Mr. Reed: That is not the way it went out?

Mr. Bostwick: No.

Mr. Reed: I make the same objection to this I made before.

Mr. Bostwick: What date is that, Mr. Kleeb?

Mr. Kleeb: July 15th, Mr. Bostwick.

Mr. Bostwick: Thank you.

Trial Examiner Walsh: It may be received.

(Thereupon the document above referred to was marked as Board's Exhibit No. 20 and received in evidence.)

By Mr. Kleeb:

Q. Mr. Wilner, is Board's exhibit 20 the final draft of the statement which the company finally did post, give to its employes? Is it the final one?

A. No, it is not, sir.

Q. It is the final one with reference to the conference you had the day before?

A. It was the one agreed upon to be posted on the 15th, but which was not posted on the 15th.

Q. You have testified that Board's exhibit 20 was to have been posted on the company bulletin board on July 15th. Was that ever done, to your knowledge?

A. It was not.

Q. Will you state, please, what occurred following your receipt of that statement?

A. On the morning of the 15th I received a telephone call from the union headquarters and I was informed that that agreement had not been posted. I then talked on the telephone with Mr. Ebbert. I asked him why it hadn't been posted, and he told me that it wasn't done and that the rea- [fol. 601] son for it was that Mr. Anderson objected to certain phrases in the agreement, and that, besides, Mr. Heinz was out of town, and they thought they had better submit it to Mr. Heinz.

Q. Will you continue and tell what happened after that?

A. I protested and said it was agreed that it would go up. That this was causing the union a lot of trouble, and particularly in view of the fact that the Heinz Employees Association were circulating stories that no agreement would ever be reached and nothing would ever be posted, and, as proof of that, the fact it hadn't been posted on the 15th when it had been agreed upon and when we stated that it

would be. Mr. Ebbert said that that's what it was, and that's all there was to it; and then I asked him when Mr. Heinz would be back, and he said Mr. Heinz was expected back on the 20th.

Q. Of July?

A. Of July.

I called Mr. Ebbert on the 20th and I believe he told me at that time that Mr. Heinz had not yet returned. I called him on the 21st, that is, Mr. Ebbert, and Mr. Ebbert told me that he had not yet been able to see Mr. Heinz, because he was too busy with other things, something like that, something of that sort, and on the 22nd I again talked with Mr. Ebbert and he told me he had an appointment with Mr. Heinz for, I believe, 10:30 that morning, when he was to go over the whole thing.

I talked with Mr. Ebbert later that day, or the next day, I am not sure which, and he then told me that Mr. Heinz was going over the statement and that he wanted to rewrite it in entirety and make some substantial change, and we had better just wait until those changes were made.

I was in contact with Mr. Ebbert then the next few days and, I believe, I met with him on either the 29th or 30th of July, at which time he turned over to me the statement of policy as drawn up by Mr. Heinz.

Q. What date was that?

A. The 29th or 30th of July, I believe, and that statement differed very widely from the one which was to have been posted on July the 15th, 1937.

Q. I show you two typewritten pages with some ink notes on them, and ask you to take it and state, if you can identify [fol. 602] that.

A. Yes. This is the draft Mr. Ebbert gave me, as I said, on, I believe, the 29th or 30th of July. Then I met with Mr. Ebbert and Mr. Bostwick on, I believe, July 31st. We met in the Union Grill, as I recall it. I believe that was on Saturday afternoon, and we had lunch, talked over this statement.

I protested that it wasn't what had been agreed upon on July 14th, which was to have been posted on July 15th, and I pointed out, also, I didn't think it was true collective bargaining, and so on, and we finally agreed that I would take it back to the union and then get in touch——

Oh, I also stated, very definitely, that I thought this was

objectionable but that the union had the final word on it; I would take it up with them.

Q. Can you explain the ink notations, the few that there are on that?

A. These ink notations were not made at that time, during the conversation with Mr. Bostwick and Mr. Ebbert, but we did have some discussion about one paragraph, particularly, wherein the word "Sunday" or "Sundays" had been eliminated, as to the question of overtime, and Mr. Bostwick stated that he thought that was probably through error; that there wouldn't be, in his opinion, any argument about that. I took it up with the union and then, the next week, I was out of town, I had to go to Harrisburg, and we took up the negotiations again, then, the second week in August, after I returned from Harrisburg.

Q. Well, when were these other pencil notations—not pencil, ink notations—made?

A. These ink notations were made in a meeting held in Mr. Bostwick's office on, I believe, August 11th, at which time Mr. Bostwick, Mr. Riley, and Mr. Shinabarger represented the company and Mr. Tasker and, I believe, Mr. Kracik, Mr. Steinmetz, and one or two others were there representing the union. At that time we particularly objected to many of the—We objected to many of the changes and particularly objected to the fact that, in the first place, the name of the union had been entirely excluded from this statement. It merely referred to us as a certified collective-bargaining agency, without any other identification.

As I recall, we also objected to the fact that although we had agreed that new employees would be assigned rates less [fol. 603] than the standard, not exceeding five cents per hour less for the first month, yet this draft had changed it to three months.

We also agreed—That was section 1-a.

We also agreed, or rather, objected to paragraph c of section 1, which stated that the employees whose age or physical condition prevents them from performing regular production work may be assigned rates less than the standard rates above mentioned; such rates in every individual case to be agreed upon by the company and the individual employee, and the exception is to be used only to provide useful employment for persons unable to carry on regular activity. Such rate shall not be more than five cents per hour less than the standard rates.

In the understanding of July the 14th there was a clause in there that the union was to have something to say about that. That was excluded, and we could not get that back in; either that or the 30 days under section 1-a.

There was another change! In the working hours under the statement agreed upon on July 14th time and a half was to be paid for all hours in excess of 40, for eight hours a day or 40 in any week. In this agreement, or in this statement, it states that, effective July 1, 1937, the regular schedule of working hours shall be eight hours per day and 40 hours per week for all production and maintenance employees. Then it went on to say that time and one half will be paid for all time in excess of eight hours in any one day or for all time in excess of 44 hours in any one week.

In other words, overtime would not be paid except over and above 44 hours in a week.

Q. Weren't there negotiations to change those situations?

A. Well, we did negotiate about this, and, at the end of this particular conference, Mr. Riley and Mr. Shinabarger agreed that that be made 40 hours again, as it was in the statement of July 14th.

Q. And was it this discussion that caused those notations to be on that document?

A. That's right. We went over the other things, and I would like to call particular attention to the fact that under the statement agreed upon on July 14th, the grievance procedure was set forth in great detail. In this statement drawn up by Mr. Heinz there was one short paragraph on [fol. 604] adjustment of grievances which read as follows: "Adjustment of grievances: In accordance with the National Labor Relations Act, usually known as the Wagner Act, it is expressly understood that any individual employee or group of employees shall have the right at any time to present grievances to the company and nothing herein shall in any way limit or restrict such rights. In case of any disagreement any employee or group of employees has the right to refer the matter to the bargaining agency for discussion with the company. The wage rates and other conditions hereinabove set forth shall remain in effect until further notice." In other words, our union was not named in that paragraph or in any other place in this statement. It did not set forth what the grievance procedure should be and, to us, it was not at all satisfactory. We asked that the grievance procedure as set forth in the former statement

be returned to this and that we be specifically named as the collective bargaining agency. The objection was, I believe, that Mr. Heinz—I am merely telling you what was told us by the representatives of the company—that Mr. Heinz did not want that in because it would make the agreement too long; that he wanted something short that could be posted upon the bulletin board and also something that could be sent to each employee. We argued about that and finally we couldn't get the grievance procedure in, but I insisted that we, at least get our name in this last paragraph if we couldn't get it in anywhere else and also that if we couldn't get the grievance procedure set forth in this statement that we should at least make some reference to grievance procedure which had then been in effect. In other words, at this time, there had been, actually, a grievance procedure in effect between the union and the company and I suggested that we refer to it in that manner and have it understood that the agreement procedure then in effect—the grievance procedure then in effect which was substantially set forth in the former statement would continue, and that was agreed on so that that paragraph was made to read that way. That explains my notations on that paragraph.

Mr. Kleeb: I wish to offer that draft in evidence as Board's Exhibit 21.

Mr. Reed: Objected to for the same reason.

[fol. 605] Trial Examiner Walsh: It may be received.

(Thereupon the document above referred to was marked as Board's Exhibit No. 21 for identification and was received in evidence.)

Mr. Bostwick: Does that bear a date?

Mr. Kleeb: No, sir, except the witness' testimony identified it as with the date of July 29th or 30th.

The Witness: That's my recollection. It was one of the two days before we had lunch, Mr. Bostwick.

Mr. Bostwick: I was merely inquiring.

By Mr. Kleeb:

Q. I now hand you two typewritten pages and ask you if you can identify that statement?

A. Yes. This is the final draft of the statement as agreed upon August the 11th. In other words, it is the agreement

or rather the statement of Mr. Heinz with the changes made on August the 11th and that statement was actually posted on the Bulletin board of the Heinz company on August the 15th.

Q. By agreement?

A. By agreement.

Q. Was anything else to have been done with it besides posting it?

A. I recall a copy was to be sent to each employee.

Q. From reports, of course, you could only judge by reports you got from the union representatives, was it mailed to the employees?

A. As far as I know, it was not.

Mr. Kleeb: I wish to offer this final draft which was posted in evidence as Board's Exhibit 22.

Mr. Reed: No. objection.

Trial Examiner Walsh: It may be received.

(Thereupon the document above referred to was marked as Board's Exhibit No. 22 for identification and was received in evidence.)

Trial Examiner Walsh: I call you- attention to the time, Mr. Kleeb.

Mr. Kleeb: May I put in just one more exhibit?

[fol. 606] Trial Examiner Walsh: Go ahead.

(Thereupon the document above referred to was marked as Board's Exhibit No. 23 for identification.)

Q. Mr. Wilner, I offer you Board's Exhibit No. 23 for identification, which is a letter dated August 17, addressed to Mr. H. E. Riley, in care of the Heinz Company and signed by Anthony Tasker, business agent. Do you know, in representing the union and its representatives, if such a letter was sent under your direction?

A. Such a letter, I am informed, was sent by registered mail to Mr. Riley under date of August 17th in which—do you want me to read it?

Q. No, I want you to identify it.

Mr. Bostwick: Is this the copy?

The Witness: That's a copy.

Mr. Kleeb: Mr. Riley would have the original.

Mr. Bostwick: We want to see it.

By Mr. Kleeb:

Q. Did you know that the union sent this to Mr. Riley?

A. Yes, the union conferred with me before they sent it and in it we reiterated our protests indicating that this was not, in our opinion, true collective bargaining, nor bargaining in good faith under the terms of the Act and we made it clear that we were, so to speak, accepting under protest as the only thing that could be done under the circumstances.

Q. Can you state, Mr. Wilner, why, although you protested this as not true collective bargaining, that the substance of what you talked about was accepted? Why was that done?

A. Well, we felt that what had been gained there was the result of our efforts. We felt we didn't want to deprive the employees of the Heinz Company of the fruits, however small they were, of these negotiations and that we hadn't any choice except either to take it in this form or strike. In other words, we couldn't get anything more, and so we had to take it under protest in order to get what little we could.

Mr. Kleeb: Realizing this is Anthony Tasker's letter, I wish, at this time, to offer in evidence as identified by this witness, if you have no objection——

Mr. Reed: No objection.

Mr. Bostwick: We will admit it is a copy.

Mr. Kleeb: Counsel for the respondent admits it is a [fol 607] copy of the original letter Mr. Riley received.

Trial Examiner Walsh: What is that dated?

Mr. Kleeb: August 17th, 1937.

Mr. Reed: We will admit we received it. It's a self-serving letter.

Mr. Kleeb: Granted.

Mr. Reed: What it's worth is——

Mr. Kleeb: Granted.

Trial Examiner Walsh: It may be admitted.

(The document heretofore marked "Board's Exhibit No. 23" for identification, was received in evidence.)

Trial Examiner Walsh: We will stand adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 4:35 o'clock, p. m., November 17, 1937, the hearing was adjourned to 10 o'clock a. m., November 18, 1937.)

The hearing in the above-entitled matter was resumed, pursuant to adjournment on yesterday, at 10 o'clock a. m.

Before:
J. Raymond Walsh, Trial Examiner.

Appearances:
Robert H. Kleeb on behalf of the National Labor Relations Board.
Earl F. Reed, Esq., Donald W. Ebbert, Esq., and R. G. Bostwick, Esq., of the firm of Thorp, Bostwick, Reed, and Armstrong, 2812 Grant Building, Pittsburgh, Pennsylvania, on behalf of the respondent.

Proceedings.

Trial Examiner Walsh: The hearings will please come to order.
Mr. Kleeb, you may proceed.

J. ALFRED WILNER resumed the stand and testified further as follows:

Direct examination (Resumed).

By Mr. Kleeb:

Q. Mr. Wilner, I hand you Board's exhibit 19, which was [fol. 608] identified by you yesterday as the first draft prepared by Mr. Ebbert, and Board's exhibit 22, which was the final draft which the company posted.

I call your attention to the first paragraph of each of these exhibits. In the first draft the name "Canning and Pickle Workers Local Union No. 325" appears while in the first paragraph of Board's exhibit 22, the final draft, it does not appear, but the paragraph says that the company has bargained with the certified bargaining agency for our employees, and so forth, not naming the union.

Have you any explanation for that? If you know why the name is in the first and why it is not in the final draft?

A. Well, first of all, Mr. Kleeb, Board's exhibit 19 is not the first draft; that is the second draft.

Q. I am sorry. The first draft, you didn't have a copy of that?

A. That's right. This is the one prepared on the 12th of July.

In that draft, Board's exhibit 19, as you point out, the name "Canning and Pickle Workers Local Union No. 325" appears. In the Board's exhibit 22, the final draft, the name "Canning and Pickle Workers Local Union No. 325" does not appear, but, instead, the words "certified collective-bargaining agency for our employees" does appear.

The explanation given to us was that Mr. Heinz was interested in making this statement as short as possible and that, therefore, he did not want to include the name of the union in the first paragraph.

I pointed out, during the discussion, that putting in our name was not—did not take up any more space than the words "Certified collective-bargaining agency for our employees" and I pointed out that the reason—it at least seemed evident to us—that the reason given by Mr. Heinz was not the real reason for keeping the name out of the first paragraph.

Q. After you stated that, namely, that the name of your union was no longer than the words actually used, was there any other reason put forward by the company why your name, the name of the union, was not used?

A. There was no other reason except we were told Mr. Heinz insisted it remain this way. That's the way he wanted [fol. 609] it and that's the only way he would permit it to be done.

Q. Not to name the union?

A. Yes, and it was only after much argument, as I said yesterday, we were able to get our name in the last paragraph of the statement, and that was in the meeting of August 11th.

Q. I observe in the first paragraph of the final bulletin, Labor Relations Bulletin, which was posted some time in August, I think, according to your testimony, the first paragraph, in speaking about the "Certified collective-bargaining agency for our employees" has, in parentheses, thereafter:

"Not including, however, foremen, assistant foremen who are paid on a monthly basis, policemen, outside truck driv-

ers, office employees, or factory employees paid on a monthly basis."

Have you any explanation to offer why the wording of that is somewhat different than the eligible group agreed upon June the 4th? Why it reads differently? Is there any explanation for that?

A. Well, it may read differently, but it was substantially the same thing that was agreed upon June 4th except here outside truck drivers are specifically mentioned, whereas, in the June 4th agreement, as I testified earlier, the outside truck drivers were agreed upon as being excluded after the thing was signed.

Q. At the time that this statement of policy or bulletin was finally drafted, or during the negotiations or the conferences about that bulletin, was it understood, if you recollect, that the unit or group was the same which was decided upon on June 4th?

A. Exactly the same, sir.

And the reason, I might add further, for the exclusion of the outside truck drivers, was that the fact that the argument came up on June 4th that these men were covered—I believe were negotiating through the Teamster's Union at the time, with the company, or, if they weren't negotiating, they had, at least, notified the Canning and Pickle Workers Local Union they intended to negotiate. I am not sure which it was.

Q. Is the Teamsters' Union associated with the American Federation of Labor also?

[fol. 610] A. It is, sir.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. Mr. Wilner, you first came into this case when the strike was already in progress?

A. That is correct, Mr. Reed.

Q. And the first thing that you had to do was with the negotiations that related to the settlement of the strike; wasn't it?

A. Well, you mean to do with the company or with the union?

Q. Yes, with the company?

A. That is right. The first time I met with the company representatives was on June the 4th in the William Penn Hotel.

Q. Some of the members of the union, or perhaps, the union, had filed certain affidavits with the Labor Board, had they not?

A. I have been so informed.

Q. And the company, so far as you know, had no knowledge of what those were?

A. I know nothing about that, Mr. Reed.

Q. Well, they were never discussed, the contents, nor the names of the complainants were never made known in any negotiations you had with the company?

A. No. It was merely stated that certain complaints had been filed by the union, and the company knew that they had been filed, that is, at least in these conferences, it was mentioned freely.

Q. Now, the Labor Board then took the position, did it not, that it did not want to hold an election in which there would be on the ballot the name of a union against which charges had been filed unless by consent?

A. Well, I think, Mr. Reed, that the Labor Board's regulations are that there cannot be an election without a hearing unless there is a consent, and, consequently, we would have had to go into a hearing and a petition for an election to hold an election unless there was a consent; and I believe that was the reason for the consent stipulation being signed.

Q. Well, was it not the Labor Board that requested this stipulation or its representative, of course?

[fol. 611] A. I don't remember whether or not that it was the Labor Board that requested the stipulation, but I do remember that I was the one that requested that the clause that these charges not be dropped or waived by reason of the election—I remember that I insisted on that part of it, and I don't remember whether it was the Labor Board or not that insisted on the other.

Q. A stipulation or the idea of signing such a stipulation originated with Mayor Scully, didn't it?

A. Mr. Reed, that was before I was in the case, and I don't know. I know that there were some conferences in Mayor Scully's office, but I was not present and had no connection with the case at that time.

Q. The union was claiming that the association was a company dominated union, wasn't it?

A. That is right.

Q. And it didn't want to be in the position that it waived those claims?

A. That is right.

Q. And that is why this stipulation was signed?

A. Well, I agree with part of the statement. That isn't the whole reason. I think that the stipulation was signed, as I said, so that we didn't waive a thing, but I believe that it was necessary from the Labor Board's point of view that such a stipulation be signed in order to have a consent election. I understand that in all cases, in a consent election, all parties must sign and *and* agree to it.

Q. Now, in the agreement which settled the strike, you say that Mr. Dewey wrote the first draft, this memorandum?

A. Well, at least, he brought this draft to me. I didn't see him write it, but he told me that he wrote it and brought it to me typed in the form you probably have it without the addition of the words in the writing of Mr. Porter.

Q. Well, at any rate, he presented this draft?

A. That is right.

Q. To both sides?

A. He presented it to us; I assume he presented it to you.

Q. And in that draft were the words that "the company agrees to recognize the organization receiving the majority of eligible votes cast as the exclusive bargaining agency, and will within 10 days after announcement of election [fol. 612] results, commence negotiations for the purpose of reaching an agreement," and so forth?

A. That is correct, sir.

Q. And you suggested the insertion of the word "written" before the word agreement?

A. Exactly.

Q. So that it was your request that the word "written" be put in there?

A. Right.

Q. And the company refused?

A. Through you.

Q. Yes. Well, Mr. Riley was there and Mr. Shinabarger was there?

A. That is right, yes.

Q. Who else was there?

A. In the room at the time?

Q. Yes.

A. As I recall it, Mr. Dewey was there, Mr. Moser, Mr. Porter, Labor Board's attorney, Mr. Gutowsky of the union, Mr. Novak, and I believe Miss Mildred Novak, and I. Mr. Kracik had been there earlier, and I believe he left at that time. Mr. Riley and Mr.—I believe Mr. Shinabarger was there at the time also.

Q. Now, I understood you to say in your direct examination that the reason given for objecting to the word "written" which you wanted to insert was that no agreement might ever be reached; is that it?

A. You said, I believe, that there might not be a meeting of the minds.

Q. Well, then, there would be no agreement at all, would there?

A. That is right.

Q. What would the word "written" have to do with that? There would be no agreement, oral, written, or otherwise, then, would there?

A. Well, Mr. Reed, you are the one that said it, and I only know what you said.

Q. Well, you know that that statement would be a perfectly meaningless thing, wouldn't it? It would be perfectly meaningless for myself or anyone else to have said that the word "written" would make any difference if we came to no agreement at all?

A. Well, Mr. Reed, my opinion is that the playing upon the difference between, as far as employers are concerned, [fol. 613] in written and oral contracts is meaningless, and I don't understand all of this play that there has been lately on why employers will say that they agree to something orally but they won't sign a contract or won't agree in writing. To me that doesn't make sense, so that I will agree that your remark didn't make much sense to me either.

Q. No. And it wouldn't make sense to anyone to object to the word "written" if there was no agreement of any kind, would it?

A. Well, I will put it this way, Mr. Reed. It made as much sense as Mr. Girdler's statements and others that were made around that time.

Q. Well, Mr. Girdler hadn't made any statement at that time; had he?

A. Well, as I recall it, around June there was quite a fuss in the steel industry about signing agreements, and so on, and that was very much in the air.

Q. Well, you agreed that if I said what you say I said, it was a perfectly meaningless thing?

A. No, I don't agree that it was a perfectly meaningless thing. I agree that it is a statement that I wouldn't have made, but that you made the statement. I didn't understand the full portent of it, but I thought that if you said what you said and then followed that as you did, with a statement that the company was not taking the position that they were objecting to a signed contract, that your word as a reputable member of the Bar ought to be enough and that we all understood what was meant.

Q. Now, I will ask you the question again because you haven't answered it.

Do you agree that if I said what you gave on cross examination, that it didn't mean anything because if there was no agreement it made no difference whether it was written or oral or anything else—do you agree to that?

A. No, because the way you said it was this, that you did not want to be committed to agreeing to something if there was no meeting of the minds and that if by putting the word "written" in there it would indicate that you had to come to some agreement and you were committing yourself in advance to some agreement.

Q. Well, you know that when you start negotiations nobody commits himself in advance to reaching some agreement, does he?

[fol. 614] A. Oh, Mr. Reed, I am only telling you what you said. Now you are arguing with me why you said something. I don't know that.

Q. No. I am asking you why if you thought that was a meaningless thing you didn't discuss it, ask more about it?

A. Well, I can tell you that I discussed that with Mr. Dewey at the time right there, and said right on the side—I said, "Well, this doesn't make sense to me." And he said to me, "Well, he has made it clear that the company is not objecting to a signed agreement; they are merely objecting—or a written agreement. They are merely objecting to putting that in there because it commits them in advance." He said, "Go along with them. I don't think you will have any trouble."

Q. He said that to you privately, didn't he?

A. On the side. I raised the question. Then he called me aside and told me that.

Q. Well, isn't it a fact that what I said more than once was that whether the agreement be written or not was one of the things to be negotiated, and that we were not going to bind ourselves in advance to a written agreement?

A. I don't remember that, no sir.

Q. Don't you recall my saying several times that that is one of the things to be negotiated?

A. No, sir, I do not.

Q. And that would be a sensible thing to say in connection with opening negotiations, wouldn't it?

A. It might be.

Q. Yes. It wouldn't be sensible to say if there is no agreement—the word "written" means nothing; does it?

A. The fact that it might be sensible does not prove, Mr. Reed, that you said it.

Q. Oh, no. I probably say a lot of things that aren't sensible.

A. That is right.

Q. But you know that whether or not you have a written agreement or an oral agreement is usually one of the subjects of negotiation; isn't it?

A. I don't see how you can ask a question like that as a subject of negotiation. It might be in one case; it might not be in another. That was the thing that we were interested in, having decided at that point, and I thought we [fol. 615] did have decided at that point.

Q. You thought we had it decided that there would be a written agreement?

A. Yes, sir.

Q. Well, then, why didn't you insist on having it in writing?

A. I did insist, and then as a result of the reason you gave and the conversation I had with Mr. Dewey, he said, "No, why throw the whole thing up over a thing like that when there is an understanding on all of the parties on what is to be done? Go along with this thing." That is what Mr. Dewey told me, and I took his advice.

Q. This remark of Dewey's was on the side to you and not in our hearing?

A. I don't know whether you heard it or not. He said it to me.

Q. Well, he said it to you on the side?

A. I believe he did.

Q. Yes. And you deny that it was said there more than once that the question of written or oral was to be one of the things to be negotiated?

A. I never heard such a statement.

Q. You say it was not said?

A. I didn't hear it, and I didn't hear it until now.

Q. Now, you know that if a party insists upon a word in a contract and another party opposes it and it is left out, that it is a difficult thing to put that into the contract afterwards orally, don't you? You know that a writing is supposed to conclude all the matters that are agreed upon in a conference?

A. Ordinarily, yes.

Q. Yes, and that when one of the parties insists upon a word and another party opposes it and it is left out, that that is a serious matter, isn't it?

A. Ordinarily, yes.

Q. And yet you expected to come in and have written into this agreement the word "written" because you so understood it, although you agreed to its omission at that time the contract was written?

A. I only agreed to its omission in view of what you had said at the time. Had you made no statement, that would have been an entirely different proposition, but you made a statement explaining your position, and as I said, I took your word for it together with Mr. Dewey's advice. We were anxious—there was a strike on—we were anxious to [fol. 616] settle a strike and as long as there was a general understanding of what was what, we weren't going to quibble about it and drag the thing out. As I recall it, that conference had started in the morning, and it was already late in the afternoon by the time we had even arrived at this stage.

Q. Now, you used in your testimony the word "unilateral" and the word "bilateral" agreements. You said you thought there was going to be a signed bilateral agreement.

What is a bilateral agreement?

A. You want a legal definition?

Q. Yes.

A. Well, I think it is—a bilateral agreement would be a contract between two parties, and if you put in the word

"written" then it is in writing and it is signed by the two parties.

Q. You think that whether a contract is unilateral or whether it is bilateral depends upon whether it has two signers or one signer; is that right?

A. Well, I should say whether—it is not necessarily—you put the words "signed in writing" in there, and I would say that if it is to be signed in writing, then both parties should sign and it should indicate that one party was to do one thing and another party is to do another.

Q. That is the point. It depends upon who promises something, doesn't it?

A. That's right.

Q. If one person makes the promise, it is a unilateral contract, isn't it?

A. Well, if everything comes from one side, I should say so.

Q. And if the promises are all outstanding on the part of one person, it is a unilateral contract, isn't it?

A. Ordinarily.

Q. And if there are outstanding promises on the part of two people, it is a bilateral contract, isn't it? Two or more?

A. It can be bilateral even though one of the parties makes all of the promises, or the promises in writing, shall we say. In other words, there is an implication of responsibilities on the part of the other party. There can be.

Q. Would you say a promissory note is a bilateral contract or a unilateral contract?

[fol. 617] Mr. Kleeb: I object to the bar association quiz. It seems to me that the witness very plainly indicated that his understanding was that it was to be an agreement between the union and the company, the winner of the election and the company, and was to include wages, hours, and working conditions, and executed and signed by both parties. I think it is unnecessary to put this witness to a quiz, a legal quiz.

Mr. Reed: The witness in his own testimony used the words that he expected a bilateral contract, and counsel has the right to interrogate him as to what he understands those words to mean, because that goes to the very gist of his testimony, and it questions their proof.

Trial Examiner Walsh: The objection is overruled.

By Mr. Reed:

Q. Do you regard a promissory note as a bilateral contract or a unilateral contract?

A. I would say, ordinarily, a unilateral contract.

Q. Yes, because the promise is all on the part of one person, the payer, the one that is to pay.

I want to read you a statement from the Restatement of the Law of Pennsylvania. I don't want to mislead you, but I want to know if you agree with this, a restatement of general law:

"A bilateral contract is one in which there are mutual promises between two parties to the contract."

Do you agree with that?

A. Read that again, sir.

Q. "A bilateral contract is one in which there are mutual promises between two parties to the contract."

A. I think that's a good statement, yes.

Q. So that if you expected that there would be a bilateral contract, you thought there would be a contract in which both sides would make certain promises, didn't you?

A. That's right.

Q. Yes. Now, what is there in this contract as it was finally evolved that amounts to a promise on the part of the union?

I just hand you the contract and I will ask you to show me anywhere in there that the union or any member of the union makes any promise of any kind.

[fol. 618] A. Mr. Reed, I didn't draw that. That was drawn by Mr. Heinz and it was given to us as all that we could get. Mr. Heinz and the Heinz Company were not interested in giving us, as we later found out, a bilateral contract. They didn't want any promises from us. They were giving a statement of what they would give, and nothing more, and they would not—and that would not even be signed. That was going to be in the statement of policy, and the whole idea was, as I see the thing, was to make this union look bad; that they weren't good enough for the Heinz Company to enter into an agreement, weren't responsible enough, or something of that sort. That was the implication and that was what Mr. Heinz was interested in showing.

Q. You know that is not an answer to my question.

Mr. Reed: Will you read him the question again?

(Previous question read by the Reporter.)

A. Well, it makes no direct promise, but I think there are implied promises in there, in the sense that we are the grievance committee; we are the bargaining agency; we are the people with whom this agreement was made. This first paragraph there says:

"According to the provision of the National Labor Relations Act we have bargained with the certified collective-bargaining agency for our employees."

When you bargain, there are more than one party in bargaining. There were two parties, and we were one of them, and the following understanding has been reached. I would like to ask you with whom the understanding was reached if it was not any party and something wasn't agreed upon.

Q. There are two parties to a promissory note but the promise is on the part of the borrower and he is the one who signs it?

A. That's right.

Q. The promise there is all on the part of the company?

A. I don't agree. In the promissory note we agreed to accept those wage rates.

Q. You don't say anything of the kind. You could quit the next day, couldn't you?

A. So could you.

Q. I don't want to go into a legal argument.

A. You are starting one, sir.

Q. Is there anything in that agreement to stop the union [fol. 619] from calling a strike the next week it it wasn't satisfied with those wages?

A. Nothing any more to stop that than the company from shutting down the plant or to change the wage rates the next day.

Q. Is there anything in that agreement by which any man agrees to work for the company?

A. Well, our men agreed to work at the rate that's stipulated in there, yes.

Q. Where do they agree to work?

A. "On the basis the following understanding has been reached."

Q. Couldn't the men quit individually or collectively any time they wanted to?

A. Why, you could do that no matter what kind of an agreement had been reached.

Q. You couldn't do it if you had an agreement to work for a certain length of time.

A. Every individual entering into a certain thing could quit. You might go after him for breaking the contract, but he could certainly quit.

Q. There is no promise there on the part of the men to continue to work at this wage for any length of time, is there?

A. No, because the company refused to enter into it for any definite period. We asked for a year's contract and that was another thing the company refused to do. Only "until further notice."

Q. What could be gained by having the union sign that contract?

A. You are asking me now for the difference between a written and an oral contract?

Q. No. You know that a written contract includes the typewritten one just as well as that, don't you?

A. Yes. I am not arguing about that.

Q. And you know that the company, by posting that contract and that signed statement on the bulletin board, became bound by that, don't you?

A. Yes. Mr. Reed, my answer to that is: It's entirely a matter of psychology on the part of the employee.

Q. That's right.

A. And it comes down to the question of what the effect of this is as compared with the effect of a written contract and it makes a big difference in the mind of the employees [fol. 620] as to whether they are being dealt with or whether they are being mis-dealt with.

Q. That's exactly what I wanted to get at. It didn't make a bit of legal difference, it didn't affect anybody's rights, but, as a matter of psychology, as you said, using your words, you would like to have had a contract which the union signed; is that right?

A. And in addition one for a definite term rather than the one for this term that was put in here, which was "on notice."

Q. That's a matter of negotiation, whether it be a term or not?

A. Yes.

Q. But the purpose of wanting the union to sign it was psychological, wasn't it?

A. Mostly, yes.

Q. That means you wanted to go out and use that to force men to join the union, didn't you?

A. Nothing of the sort.

Q. That's how—That's the use that would have been made of it, isn't it?

A. I don't agree with that at all, sir.

Q. You know that the union immediately goes out to the employee that doesn't belong and says, "Now, the company signed; now you sign"; don't they?

A. I know nothing of the sort.

Q. What is the psychology you had in mind?

A. The psychology is we are a signatory to an agreement. We are on terms of dealing and not on the terms of accepting the crumbs that fall off the table. We are dealing as equals in anything Mr. Heinz might be willing to let us have.

Q. Here are two statements, 16 and 17, which you signed and the company signed. You know about those, don't you?

A. I didn't sign it.

Q. I mean, your union signed them and the company signed them.

A. That's right.

Q. So that, if you wanted to show the men that the company was on an equal basis and did sign the same paper you signed, you had two of them, didn't you?

A. That is only an agreement to end the strike.

Q. You had two written agreements that the Heinz Com-
[fol. 621] pany had signed and your union had signed, hadn't you?

A. Yes.

Q. So that if you wanted to show to the men you signed on the same basis as the company did, you had those two agreements?

A. These were agreements for the ending of the strike and there was no agreement we have showing we had entered into a contract signed by the company and signed by us.

A. I told you what they were. Those were to end the strike. Of course, the company was willing to sign them, because they wanted the strike over.

Q. I asked you if they were contracts which you both had signed. You can answer that Yes or No.

A. Yes.

Q. Yes. All right. You wanted, in the agreement, the whole procedure under the union rules by which a grievance is adjusted, didn't you? You wanted it all stated out?

A. That's right.

Q. Now you know there were at least 800 people over there that didn't belong to your union, weren't there?

A. There were 800 that voted against it, yes.

Q. Now, you wanted the company, then, to put out to all of its employees something that would indicate that all grievances had to go through this step in the union, didn't you?

A. No, we didn't, because the individual employee still had the right to take up his grievances directly with the employer.

Q. Sure.

A. And we weren't attempting to stop that right on the part of anyone.

Q. Well, the law, of course, gives them the right to take it up directly?

A. That's right.

Q. But don't you admit that you wanted that in there for the psychology on the men, so that every worker would see that the way to take up a grievance was to go with this one and that one and on up through the grievance committee of the union?

A. We wanted the people to know if they went themselves and did not receive satisfaction, or if they prefer to refer to our grievance committee, we stood ready to [fol. 622] represent them under the rights given by the law because we were the only committee under the Labor Relations Act that could take up grievances.

Q. You are mistaken about that, aren't you, Mr. Wilner?

A. The only organization.

Q. Oh, I think not.

A. The Heinz Employees Association would not, under the law, be permitted to take up grievances after they lost the election.

Q. You know that the law says any employee——

A. —or group of employees.

Q. —or group of employees could take up a grievance?

A. That's right.

Q. So you don't think that the union is the only group that can take up grievances with the company?

A. No. I think an employee could go with every other employee and take up grievances with the company.

Q. Certainly.

A. But he could not go to the Heinz Employees Association and say, "You are our bargaining agency; you handle this thing for us."

Q. We won't argue about that; but you wanted to give the impression to the men that the way to take up a grievance was to come through the steps of the union's grievance committee, didn't you.

A. We wanted them to know if they wanted to do that, that under the law and under the agreement they could do that.

Q. Did your union,—Do you think your union would have taken up grievances for non-members?

A. I think that if it was a bona fide grievance and if it was put up to the union and the man was an employee of the Heinz Company, they probably would have. I am not a member of the grievance committee but I am giving you my sense. If I were on the grievance committee and an employee who was not a member of the union had a bona fide grievance I think I would take it up with the company on his behalf even though he was not a member of the union.

Q. Do you know of any non-union man who ever got his grievance taken up by the union grievance committee?

[fol. 623] A. I believe that was actually done by our committee.

Q. By your committee? Who was the man?

A. I can't give you names, but I am sure—because I did not handle any of the grievances; that was to be done by the grievance committee.

Q. Who could give you the names?

A. I think probably the members of the grievance committee or the business agent could do so.

Q. You don't mean to say you think these 800 men who voted for the association could effectively get their grievances adjusted by applying to the grievance committee of the union, do you?

A. On the other hand, I think they could, for the reason,

if I were on the grievance committee and a man from the outside, from outside the union, asked me to do it, I would be delighted to do it for him as proof of the effectiveness of the organization and in the hope that, thereafter, he would probably join the union.

Q. Then I understand you think that these 800 men who belong to the association could have effectively had their grievances adjusted through the union grievance committee without belonging to the union?

A. I think they could, yes.

Q. That was the impression you wanted to give by having this in the agreement, wasn't it?

A. No, I didn't think anything about that. We wanted that in so as to have the employees know they had the right to come to the union grievance committee.

Q. You know, don't you, that the management has an obligation to be fair not only to the majority party but to the minority party among the employees? You agree with that, don't you?

A. Certainly.

Q. And you don't think it would have been right for the Heinz Company to have put anything out that indicated to these 800 men they could do anything through the union grievance committee, would it?

A. The agreement didn't say they had to.

Q. That's the impression it would have given if it gave the union details about grievances, wouldn't it?

A. I don't agree it would have, and I know there are plenty of contracts in which the union does not have all the [fol. 624] employees of the plant where a grievance procedure very similar, if not exactly like that which was contained in our draft of the agreement, is contained, and I believe you represented some of the companies that signed such agreements.

Q. Do you have the by-laws of this association?

A. Which association?

Q. The union; I mean your union.

A. I don't have them here, no.

Q. Have you seen them?

A. I have seen the constitution and by-laws.

Q. Can you show anywhere there where any outsider, non-union member, has a right to take his grievance up through the grievance committee?

A. I don't have the constitution and by-laws.

Q. Will you look at those and give me an answer on that later on.

A. Yes, sir.

Q. When you got to negotiating this contract there were a great many questions that were discussed that I believe you neglected to mention in your testimony; the question of seasonable goods, and the baking and canning season, was a difficult one for this company, wasn't it?

A. That's right. There was quite a lot of discussion on that, and I don't pretend to say I covered everything that was said in those meetings in my testimony so far; if I had, I would probably be on the stand for weeks.

Q. I understand that, but I want to call attention to some of the things that occasioned these numerous meetings. I assume you don't intend to infer that the company was just meeting, meeting, meeting, for the sake of dragging out the negotiations, were they? There was something to talk about at every meeting, wasn't there?

A. There was something to talk about at every meeting, but there was a rehashing of the same thing and I very definitely suspected that the company was meeting for the purpose of going through the motions of collective bargaining.

Q. You are giving us your suspicions?

A. I am giving my impression.

Q. What had the company to gain by that? It had put the wages you accepted in force and the grievance procedure on July first, hadn't it?

A. The grievance procedure; I believe that the wage had [fol. 625] been in effect at that time.

Q. So that it wasn't holding the men out of wages. It was just a question of getting this in final form, wasn't it?

A. Mr. Reed, you are again overlooking all the psychological factors and the feelings of the men in that plant. They were wondering, our union people were bombarding us with questions: "Why isn't an agr ement signed? Why haven't you come to something? What's the reason for all this delay?" Members of the Heinz Employees Association were passing around remarks, as I understand it, that no agreement would ever be signed; that no agreement would ever be reached; that the company never intended to come to any agreement. All those things were very important and were weakening our union by reason of the fact nothing had been reached. The other side was using that as an

opportunity to build up their union as against ours, saying that they had been able to arrange, able to arrive at an agreement, during the strike, with a minimum of difficulty, whereas we were getting nowhere. The company wouldn't deal with us, and so forth.

Q. You were asking a good deal more, weren't you? You were asking a 20-percent raise?

A. That's right.

Q. And the first contract that Call submitted to the company called for a 10-percent raise, didn't it?

A. I believe it did.

Q. Then, after the strike, the first agreement you submitted asked for a 20-percent raise, didn't it?

A. That's right.

Q. And didn't you make the statement in those negotiations, in the presence of these gentlemen, Mr. Laughlin and others, that you knew you weren't going to get that, but that you had to ask for it because during the strike you had promised the men the same wages as the steel workers?

A. No, I never made such a statement.

Q. Did you hear that?

A. I would say that one time, I believe, we had asked for more on account of the fact there was a strike and that the fact that we had won an election, that, therefore, we were in a stronger position than we had been before the strike and before any of these things had occurred, and I [fol. 626] believe, I would say, something about the fact we were trying to bring up this wage scale to something comparable with that of other industries in the neighborhood.

Q. And mentioned the steel industry?

A. We mentioned the steel industry in going over comparative rates. I don't know whether I mentioned that particular rate or said we wanted to get the same rate as the steel industry. I don't recall that.

Q. And during the strike your men would make speeches in which they promised the same wages as the steel workers, didn't they?

A. I didn't hear any such speech. I don't know.

Q. At any rate you asked for more than you expected to get or thought you could get, in this first contract?

A. You mean what my private opinion was?

Q. And your committee?

A. I don't know what the committee thought. I personally didn't think we would get a 20 per cent increase, just

by asking for it. I will put it that way. I thought we would probably have some difficulty in getting it.

Q. You know that in all negotiations of this kind that's the usual thing, isn't it, to ask for more than you hope to get?

A. I think that's commonly done.

Q. Now, was there any of these meetings which you attended in which there wasn't something substantial discussed; either seasonal goods or overtime or wage rate or minimums; was there any of these meetings in which there was just stalling?

A. No, we discussed things but it was a constant re-hash, the second and third and fourth was a repetition of the first.

Q. That is often the case in negotiations, isn't it?

A. I have never been in any negotiations where they dragged out the way they did in this case.

Q. How many labor contracts like this, involving thousands of employees, have you negotiated?

A. I haven't been in many large ones, I will admit, but I don't think that makes any difference.

Q. You had lots of business deals in which the negotiations went on that way and nobody seemed to get anywhere, meeting after meeting, haven't you?

A. Never, where they discussed like this, over and over and over.

[fol. 627] Q. After a thing was agreed upon there wasn't any further discussion of it, was there?

A. Oh, yes, there was. If you recall my testimony, for instance, on the meeting of July 1st when we thought we had agreed upon things and then found out later that afternoon that there was to be no signed contract. You recall on July 14th there was a meeting in which we thought the next morning the agreement would go up and that would be the end of it and it didn't go up and finally an entirely different statement went up and that was August 15th. I call your attention to the fact these negotiations stretched out over a period of two months.

Q. You say when you first met you presented this exhibit 18 which was your draft of an agreement and as you started to go through, take certain paragraphs, that some paragraphs were passed, were they not?

Trial Examiner Walsh: This is the first draft?

Mr. Reed: Yes, this is the first draft.

Q. Certain paragraphs were passed, weren't they?

A. Well, I put it this way; we read them and we couldn't come to an agreement and we went on to the next one hoping to come to an agreement.

Q. You don't claim as a result of not bringing some matter up right at the moment that anybody became bound to accept this paragraph, do you?

A. No, I wouldn't say that.

Q. You had a paragraph in here that gave the union the first right to fill all vacancies; didn't you?

A. That's right.

Q. And you had it in here that when there was a vacancy the employer had to notify the local union and get the help from the union, didn't you?

A. That's right.

Q. Was there alteration or change in that paragraph?

A. Yes, I think I changed the period of times, there.

Q. You changed it from 30 to 15 days?

A. 15 to 30.

Q. There wasn't any indication whatsoever that the company would agree to that?

A. No, I changed that when there was some objection to the time.

Q. Who objected to the time?

A. I believe Mr. Riley but I believe Mr. Riley also said [fol. 628] that they didn't believe in giving us either a closed shop or a preferred shop; they objected to that at all times.

Q. That paragraph is just like the first paragraph as far as having an ink change by you is concerned.

A. That's right.

Q. But you don't claim for one minute that the company ever indicated in any way that they would consent to that paragraph about hiring, do you?

A. They did not.

Q. Then why do you claim that the company, by its silence, agreed to the first paragraph with your ink changes?

A. Mr. Reed, there was an entirely different attitude on the part of the company as far as the first paragraph is concerned and as far as that paragraph is concerned. The only thing to which objection was made on the first paragraph were to those three words "or its successor." They did not object to anything else at any time until after the meeting of July 1st. As to the other thing, they did not

agree to the paragraph which you allude to as to the closed shop, at any time. An objection was always made and was verbal and was very plain on the part of the company. There is no comparison and if you are trying to draw a parallel because I struck out three words in the first paragraph and one in the next paragraph, there is no such parallel.

Q. There's a question for the Court to decide, isn't it?

A. That's right. I am telling you that's the sense.

Q. Your argument that they accepted your first paragraph is based on your direct testimony to the fact you changed three words and nothing more is it?

A. Nothing of the sort. It is based on the fact that is the only thing they objected to and, therefore, I struck it out at that particular time. The fact I struck it out doesn't make it so. The fact that makes it so was the company objected to that and nothing else.

Q. The fact you changed three words doesn't indicate the Heinz Company agreed to the rest of it, does it?

A. It indicates that the company made no objection to the rest of it at any time up to July 1st.

Q. When you are carrying on negotiations over a series of meetings and you haven't reached any final conclusion, [fol. 629] you don't claim that some position a negotiator took earlier becomes binding upon him until it's over, do you?

A. I didn't say it was binding at any time. I am merely saying at no time was any objection made to this and that's all I said and that's all I intended to say. I didn't say that proves, therefore, the company is bound by the contract. I said, in showing what their course of action was, they never at any time——

Q. I understood your testimony to mean that the company at one time agreed to the first paragraph and then later changed its mind. That's not what you mean, is it?

A. I mean to say that the company had no objection to the first paragraph as it stood with the exception of the words "or its successor." In other words, I was merely trying to show through all that time there was no objection to this form of the written contract, this form which was the first paragraph of the written contract, and indicated that there would be an agreement between two parties.

Q. Well, do you say that the company ever agreed or said it agreed to the first paragraph as you had changed it?

A. Company never made any objection to it.

Q. Answer my question. Did it ever say that it agreed to that?

A. No, not in so many words.

Q. But because you didn't hear any objection about that you assumed that was all right?

A. I was merely assuming all along that there was no objection to a written contract because they did not object to that form.

Q. I will ask you the question again. Because the company did not state any objection to the form of this first paragraph until about July 15th, or whenever it was, is that the basis for your statement that it had no objection to it; agreed to it?

A. I didn't say that. I said there was no indication. I was merely showing this to show that there was no indication that the company objected to the regular form of the introduction of a contract in writing until that time.

Q. Now, this Exhibit 18 that you submitted with your pencil notations on it, this was never in the possession of the company while the negotiations were going on, was it? [fol. 630] This is your own copy with your own notations?

A. That's right. They had a typewritten copy which was identical with my copy.

Q. Were the changes in the notes that you had?

A. Oh, no, those were my own notes.

Q. So that the pen marks on it have nothing to do with the company? They are your own comments as you went along?

A. They were notes as I went along, that is right.

Q. Now, as a result of these negotiations, without talking about any particular meeting, is it not true that the demands of the union were for 62½ cents an hour, and the thing finally granted was 60 cents an hour?

A. The minimum was 62½ cents.

Q. Minimum. I mean minimum.

A. That wasn't the only thing we were asking. We were asking for a 20 per cent wage increase with 62½ cents minimum, so that if 20 per cent added to the then rate would take anybody over 62½ cents, then he was to get the larger rate.

Q. Well, it was a 10 per cent raise. You wanted a 62½ cent minimum and the company granted 60 cents minimum?

A. I think we finally—our final request was a 62½ cent minimum, and we had to give in to the 60½.

Q. Now, for women your proposal was 52 cents, and the company agreed to 45 cents; is that right?

A. As a minimum only.

Q. Minimum, yes.

A. Yes.

Q. And for boys you finally got an agreement from the company at 55½ cents, didn't you?

A. What?

Q. The minimum for boys under 21?

A. Well, that wasn't in our contract at all. That was brought up later by the company in which they asked for a 5 cent differential for boys under 21 who did not do men's work.

Q. Well, it is in the final draft?

A. Oh, yes, yes, sir.

Q. You demanded regular pay for two hours, at least, when a man was called up and there was no work for him?

A. That is right.

[fol. 631] Q. And you got that?

A. That is right.

Q. You demanded an eight-hour day, a 40 hour week and you got that?

A. That is right. I believe that was in effect at the plant, in most parts of the plant prior to the time of the agreement.

Q. There was no overtime in effect, no, prior to that?

A. No.

Q You got that?

A. Yes.

Q. You demanded a 42-hour week for watchmen, firemen, and engineers, and you got 44; is that right?

A. I believe it was 42, if—I am not sure.

Q. You got 42 for watchmen, and 44 for engineers and firemen, that is right. That is my mistake.

A. That is right. That had been, I believe—that had been in effect in the plant before also.

Q. You demanded time and a half for work days, double time for Sundays and holidays?

A. We didn't get double time, as I recall.

Q. You got time and a half for all week days over, and time and a half for Sundays and holidays except on perishables regularly scheduled Sunday, holiday work?

A. Well, that was the subject for much argument, that perishable clause.

Q. You wanted a vacation of a week for a year's service, and you wanted longer when it was five years?

A. Yes; we wanted two weeks for five, three weeks for women who had 15 years of service, and three weeks for men who had 20 years of service, and all that was received was one week for everybody over one year.

Q. You got one week for everybody over a year?

A. That is right, providing, I believe, that they worked over 40 weeks in a particular year.

Q. Beg your pardon?

A. I think that was with the provision that they must work at least 40 weeks during the year, as I recall it.

Q. There was a good deal said in the negotiations about seniority, wasn't there?

A. There was some talk about it. I don't think there was a great deal. I should say that was one of the minor points.

[fol. 632] Q. Well, wasn't there difficulty as to whether seniority would be by departments or by the plant?

A. That was never settled at the time, and, in fact, I had some correspondence with Mr. Riley sometime after August 15th with reference to that. That has never been settled. There hadn't been a great deal of talk about that at the time. As a matter of fact, there were so many other things that were discussed——

Q. You have had a good many negotiations with the company since then about various matters, haven't you?

A. I, personally?

Q. Well, grievances, haven't you?

A. I believe they have had a number of grievances. I have talked with Mr. Riley about seniority since, and he wrote me a letter indicating what the company's position was on departmental and plant seniority. I think they had a number of individual grievances which were taken up.

Q. Do you say that the company agreed to send a copy of this final draft to every employee?

A. That was my understanding of it.

Q. Didn't they say that they would post it or mail it?

A. Did they what?

Q. Wasn't it said that they would be posted or mailed?

A. My understanding was both, that it would be posted and a copy of it also would be mailed to each employee.

Q. Well, did you ever complain that it was not mailed to each employee?

A. No. I didn't think—I don't think that made a great deal of difference.

Q. No. It has been posted?

A. Oh, it was posted on August 15.

Q. You stated in your testimony this morning that you pointed out that the printing of the name of the union would take no more room than that of "certified bargaining agency." To whom did you point that out?

A. I believe to—at that time I believe Mr. Bostwick was there, and Mr. Riley, and Mr. Shinabarger.

Q. Isn't it true that you were told that the company felt that the use of the union name unnecessarily might be offensive to a large part of their employees who didn't belong to [fol. 633] the union?

A. I don't remember that at all. I believe the only one it was offensive to was Mr. Howard Heinz.

Q. And on your insistence the name of the union was put into it?

A. On the very bottom, but we couldn't get it in the first paragraph.

Q. You don't think it makes any difference in a contract whether the name is on the first line or the last line, do you?

A. Again that is a difference in psychology, and that is where it becomes important.

Q. All of the time through all of the negotiations you were looking to the psychology to please the union and help to get members, weren't you?

A. We wanted to show that we were being recognized.

Q. Well, you had an agreement that you were recognized, in writing, didn't you?

A. Our name had not been mentioned in it.

Q. Well, it is signed right there, if I can read.

A. What agreement are you talking about?

Q. On Board's exhibit 16. The company agrees to recognize you.

A. That is right.

Q. You could use that if you wanted to show you were recognized, couldn't you?

A. Well, we wanted the right if—We thought it a most unusual procedure for the company to say that it was dealing with somebody and then not naming the people they were dealing with, and giving them an ambiguous term like

"certified bargaining agency under the Wagner Labor Relations Act." We took into consideration the fact that there were a lot of people who were employed by Heinz who might not understand that term. A lot of them, as you have seen from the men who have taken the stand, are not very well educated. We wanted it made plain who it was that they were, and we didn't want to have any ambiguous or what might be ambiguous statements on there.

Q. You wanted the company to help the membership drive of the union; that is the net result of it?

A. No, we wanted it made plain that we were the bargaining agency, and that we were the people that were being dealt with, and the ones that made the agreement. We felt that if we were the bargaining agency we had the right [fol. 634] to have our name in the statement.

Q. Well, the way it was finally done, by this policy posted, that didn't affect any of the men in dollars and cents at all, did it? It would have been just the same if it had been written the way you had it written, as far as the dollars-and-cents effect on the men is concerned; that is true, isn't it?

A. You mean, had we——

Q. Had it been written in the form of a contract between A and B, signed by both of them, with these figures in it that they ultimately agreed upon?

A. You mean the wages to be paid?

Q. Wages, grievances, and so on.

A. Would the men have received the same amount as they do under this statement?

Q. No, no. You know what I mean. If the net result of the negotiation was reduced to writing and had been in the form of an agreement between A and B, instead of the form that it was, the net result in dollars and cents to the employees would have been no different; would it?

A. Well, if we had agreed on the same wages, the same wages would have been paid; that is right.

Q. The form had nothing to do with the substance of it at all?

A. It had nothing to do with the wages. I will put it that way.

Q. Or the substance of the agreement; isn't that true?

A. Well, except that the company had the right to change that on notice.

Q. That is a question of the substance of the agreement, isn't it?

A. What is that?

Q. That is a question of the substance?

A. Of the substance of the agreement.

Q. The substance was not affected by the form in which the thing was put out, was it?

A. No, I think that is correct. Yes.

Q. It was just a question of vanity with the union, wasn't it?

A. Not a question of vanity at all. It is a question of trying——

Q. Of psychology?

A. Of trying,——

Q. Maybe that is not vanity.

[fol. 635] A. —of trying to protect our rights.

Q. Your rights weren't affected, you just told me.

A. I mean our rights as a union and as an agency that was—that was dealing with another.

I notice that the H. J. Heinz Company uses its name in the thing. They didn't just use "employer." It was very evident that they were using their name; they were a party to this agreement, so were we. And, if we are a party, why object to putting our name in the thing?

And I say this whole thing, as we saw it, was a blow at our prestige in an attempt to make the Heinz Employees Association stand out over and above, head and shoulders above us.

The exhibit which has been offered here of the advertisement that appeared in the Pittsburgh newspapers during the strike very definitely stated that the Heinz Company had entered into an agreement with the Heinz Employees Association.

Q. They had no written agreement, though?

A. I don't know what they had. I only tell you what was in the paper.

Q. They didn't have as much of an agreement as you have, did they?

A. I don't know what they had. I never saw it.

Q. Then why did you make any statement about it at all?

A. I am merely telling you what was in the newspapers about the thing. They were named.

Q. You knew when you and Ebbert were trying to arrive at something, that anything that Ebbert gave you wasn't

final? You knew that you were acting as lawyers and that ultimately it had to be acceptable to your principals, didn't you?

A. Well, now, let's take that step by step.

Q. All right.

A. I knew that the thing, that the paper that Ebbert gave me on, I believe, the 7th, was not final. He sent it to me for my comments and for us to get it in line with what our common understanding was of what had been agreed upon. The same thing applies to the statement of the 12th, in which I had made comments, but on the 14th, when we met in Mr. Ebbert's office and we went over this statement of the 12th and made corrections which were suitable to both of us it was very definitely decided then that the thing was to go up [fol. 636] the next morning and that it was not subject to anybody's approval.

Q. Well, now, in your practice you don't ever think that two lawyers getting together and drafting something for their principals——

A. Just a moment. We weren't the only ones there on the 14th. Mr. Riley and Mr. Shinabarger were there on the 14th, and Mr. Tasker and Mr. Call for the union, so that representatives of everybody were there. And we were told in the meeting of June 28th by Mr. Anderson that Riley and Shinabarger had full authority to act. And there was nothing said in that meeting that anybody had to approve it.

The first time I knew that, as far as that particular meeting was concerned, was the next morning when I talked with Mr. Ebbert, and then he told me that Mr. Anderson didn't like it and that Mr. Heinz was out of town.

Q. When you are making a contract for a client you know that even if you have the papers drawn up until the man signs it or publishes it or announces it he has a right to make changes in it; hasn't he?

A. Well, it had been agreed upon, sir, in your office, and Mr. Ebbert's office, on the 14th, by representatives of the company, and there was nothing to be signed. This thing wasn't signed; it was to be posted. There was an agreement then that in that particular form it would be posted the next morning.

Q. Well, do you say that the name "H. J. Heinz Company" at the bottom is not a signature?

A. I am merely telling you that nobody was to sign it. That name was to appear down there, yes.

Q. Well, until it was in final form and acceptable to the principals of the Heinz Company, you don't think that Ebbert or anybody else had any right to bind them?

A. Sir, you are again overlooking the fact that the duly accredited and authorized agents of the Heinz Company were in his office at that time. It was acceptable to them. It was finally threshed out. The exact wording had been agreed upon. It was merely a matter of typing it up, which was done that evening, and I got a copy of it the next morning, and another copy was to appear on the bulletin board.

Q. Well, the language wasn't decided, was it? The language was still to be worked out?

A. No, sir. That was decided very definitely. We had [fol. 637] decided upon every word in the meeting of the 14th.

There was to be subject to no further approval by him or by me, and it was done and it was acceptable to all parties.

Mr. Reed: That is all.

Redirect examination.

By Mr. Kleeb:

Q. Board's exhibit 22, Mr. Wilner, is the last draft, is it not, that was posted?

A. Yes, sir.

Q. Does Heinz' name appear on the bottom of it?

A. Not on this copy that was given me.

Q. Do you know whether the name appeared on the copies which were posted?

A. I can't tell you that, because I did not—I did not see any of the copies. You will have to ask the men that. That was the one that Mr. Ebbert sent me.

Mr. Reed: It is on the top of the paper.

The Witness: Yes, I think it says "Bulletin of the H. J. Heinz Company", or something of the sort.

Mr. Kleeb: Will you state for the record that it wasn't on the bottom?

Mr. Reed: I don't know. I think it was on the top only.

Mr. Kleeb: It was issued as a bulletin, was it not, as this exhibit indicates?

Mr. Reed: And posted.

Mr. Kleeb: And posted as a bulletin?

Mr. Reed: Yes.

Mr. Kleeb: But the name did not appear, as posted, on the bottom of the Bulletin?

Mr. Reed: I don't think so.

Mr. Kleeb: That is all.

Mr. Reed: That is all.

(Witness excused.)

Trial Examiner Walsh: 10-minute recess.

(A short recess was had.)

Trial Examiner Walsh: The hearings will come to order.
[fol. 638] Mr. Kleeb, will you proceed?

Mr. Kleeb: Chester Gutowski recalled.

CHESTER GUTOWSKI resumed the stand, and testified further as follows:

Direct examination.

By Mr. Kleeb:

Q. You have testified previously in this hearing.

A. I have.

Q. Were you present at the June 4th conference in the William Penn Hotel this year when the memorandum of understanding with reference to the consent election was signed.

A. I was.

Q. And you were a part of the discussion when you entered into the discussions?

A. I was.

Q. In Board's exhibit 16, which is a copy of the memorandum of understanding signed by the parties, the fourth paragraph says in substance that the company will recognize the organization receiving the majority of the eligible votes cast as the exclusive bargaining agency, and after 10

days after the election will commence negotiations for the purpose of reaching an agreement affecting wages, hours, and working conditions.

Will you state whether you recall any discussion about that clause, about an agreement or a written agreement, and, if so, what was that discussion?

A. It seemed to be——

Mr. Reed: I will save an objection to that that I have made heretofore.

Trial Examiner Walsh: Note the objection.

A. (Continuing) —some controversy about the word "written" being placed before the word "agreement."

By Mr. Kleeb:

Q. Go ahead.

A. Whereas Mr. Reed said the word "written", if it were placed before the word "agreement", it would force the company into a position where it would be forced to sign a contract before negotiations were begun.

Q. Did you hear Mr. Reed say that?

A. I did. Not in the exact words.

Q. That was the substance of what he said?

[fol. 639] A. That is what it was.

Mr. Kleeb: Cross examine.

The Witness: And a little further.

By Mr. Kleeb:

Q. Pardon me. What else?

A. Mr. Wilner asked Reed whether this meant the company meant not to sign an agreement, and he said it was nothing of the sort.

Q. Yes.

A. Eventually they would come to a written agreement.

Q. If an agreement was reached?

A. That is right.

Q. Did you hear anything said by anyone that the company objected to signing a written agreement if one was reached? Did anybody say the company objected to that?

A. Did not.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. You have been sitting in the courtroom during the examination, Mr. Gutowski?

A. I have.

Mr. Reed: That is all.

Mr. Kleeb: That is all.

(Witness excused.)

ANTHONY TASKER, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. You are Anthony Tasker?

A. Yes, sir.

Q. Where do you live?

A. 1465 High Street.

Q. And you are a business agent for the local union involved in this case?

A. Yes, sir.

Q. Mr. Tasker, were you present at the conference in Mr. Ebbert's office July 14, 1937, the conference about which Mr. Wilner testified?

A. I was.

Q. And I believe he testified Mr. Robert Call was there [fol. 640] from the union?

A. Yes, he was.

Q. And from the company, Mr. Ebbert and Mr. Riley, and Mr. Shinabarger?

A. Yes, sir.

Q. Is that right?

Mr. Wilner identified one of these drafts of a labor-relations bulletin, Board's exhibit 20, and he testified it was agreed the language of the bulletin was agreed upon and that it was to have been posted the next day. That was so stated in that meeting.

What is your recollection on that subject?

A. Everything was agreed on, and then we tried to get it so that it will be put on the next day, on the bulletin board.

Q. What was said about that?

A. And Ebbert told me, just before we — going out, he says, "That will be on the bulletin board tomorrow morning."

Q. Was Mr. Riley and Mr. Shinabarger present when that was said?

A. Yes, sir.

Q. Was anything said that you recollect, that it had to be approved by anybody?

A. No, sir; it was approved right there in the office.

Q. Did Mr. Riley or Mr. Shinabarger say that Mr. Heinz or Mr. Anderson or anyone else had to approve that?

A. No, sir.

Q. I show you Board's exhibit 22, which has been identified as the final bulletin which was posted, I believe, about August 15th. Were you at the conference August 11th or thereabouts when that language was agreed upon?

A. Yes, sir.

Q. And was it agreed that that would be posted and or mailed, which; do you recall?

A. It was supposed to be mailed to each employee. Each employee was supposed to receive one through the mail.

Q. And was it to be posted?

A. And posted on the bulletin board.

Q. To your knowledge, was it ever mailed?

A. No.

Q. Was Mr. Riley present when that was agreed upon?

[fol. 641] A. Yes, sir.

Q. Mr. Shinabarger?

A. Yes, sir.

Q. Mr. Ebbert?

A. Yes, sir.

Q. Was anything said about anybody having to approve that draft?

A. No, sir.

Q. And it was posted.

A. And it was posted, but not through the mail.

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. This was August 11th, was it?

A. Well, I don't recall the date.

Q. Well, you testified——

Mr. Kleeb: "Or thereabouts." I did not——

By Mr. Reed:

Q. —that certain people were present at that meeting?

A. Yes, sir.

Q. August 11th. Whom did you say were there?

A. Mr. Shinabarger, Mr. Riley, Mr. Ebbert, myself, Mr. Wilner, and Mr. Call.

Q. Do you recall Mr. Ebbert being there?

A. The first meeting, yes, sir.

Q. At this meeting about August 11th?

A. That is the first meeting. The second meeting Mr. Ebbert wasn't there.

Q. Mr. Ebbert was there at the first meeting?

A. The first meeting.

Q. Now, you never made any complaint about the failure to mail this to the employees, did you?

A. No.

Q. And you do sometimes make complaints to Mr. Riley on behalf of the union, don't you?

A. On behalf of the employees, yes.

Q. Of the employees. Now, what you wanted a written contract for was to use it to get members in the union, wasn't it?

Mr. Kleeb: As to that, I object to the cross examination as not having anything to do with the direct examination and outside of the scope completely. This witness testified to nothing about what he wanted. He merely testified about what occurred with reference to the two bulletins.

Mr. Reed: This is the business agent of the union.

[fol. 642] Mr. Kleeb: I think this is immaterial with reference to the testimony he gave on direct examination.

Mr. Reed: I will ask him another question first.

By Mr. Reed:

Q. Were you satisfied with the posting of this on the bulletin board, which was discussed there, and about which you have testified before?

Mr. Kleeb: I object to that as immaterial, irrelevant, incompetent, and outside of the direct.

Mr. Reed: Well, now, he has said that he was there and it was to be posted and mailed. I am asking him if he was satisfied with the posting of it.

Trial Examiner Walsh: Overruled.

A. I wasn't satisfied, neither was the employees.
Q. What did you want?
A. We wanted it through the mail, the way it was promised to us in the office.
Q. Did you want a written agreement?

Mr. Kleeb: I object.

A. We are talking about——

Mr. Kleeb: Just a minute.
Trial Examiner Walsh: Sustained.

By Mr. Reed:

Q. Have you been active in threatening some of the employees that they must join your union?

Mr. Kleeb: I object, immaterial.
Mr. Reed: This goes to the interest of the witness very seriously.
Trial Examiner Walsh: Overruled. He may answer.

By Mr. Reed:

Q. You may answer.
A. No.
Q. You have not threatened?
A. No.
Q. You haven't told them that they had to join this union?
A. No.
Q. You haven't told them that there might be trouble if they didn't?
A. Yes.
Q. How is that?
A. Yes.
Q. You have told them that?
A. Through a leaflet.

(Thereupon the document above referred to was marked as Respondent's Exhibit 1 for identification.)

[fol. 643] By Mr. Reed:

Q. I show you a paper which has been marked "Respondent's Exhibit No. 1", purporting to contain a notice signed by you, and ask you if you wrote and published that notice.
A. I don't see that this is a threat, not to my knowledge.

Q. I didn't ask you that. I asked you if you wrote and published it.

A. Yes.

Q. All right. And in that you say——

Mr. Kleeb: Just a minute. I object to the attorney for the respondent reading anything that notice says until it is offered in evidence so counsel will have a chance to object to it.

Mr. Reed: Quite right. I will offer in evidence respondent's exhibit 1. I don't think this is the proper time to offer my exhibits, but if you want it now,——

Mr. Kleeb: I don't care whether you offer it now or not. I don't want you to read in the record anything that is not offered.

Mr. Reed: I have a right to read a paragraph.

Trial Examiner Walsh: I think it had best be offered in evidence.

Mr. Reed: I offer it.

Mr. Kleeb: May I see it, please?

(The exhibit referred to was handed to Mr. Kleeb.)

Mr. Kleeb: If the Trial Examiner please, I object to the admission of this exhibit for the reason that it is irrelevant, immaterial, incompetent, and further I wish to object to the line of questioning of this witness as immaterial and outside the scope of the direct examination.

Trial Examiner Walsh: The objection is overruled. You may proceed on this. Do you want an exception to this?

Mr. Kleeb: Well, I thought it was understood that all objections of counsel——

Mr. Reed: We did have that agreement.

Trial Examiner Walsh: For you, too?

Mr. Kleeb: There is an exception automatically noted.

Trial Examiner Walsh: Excuse me. That is all right.

(Thereupon the document heretofore marked as "Re-
[fol. 644] spondent's Exhibit No. 1" for identification was received in evidence.)

By Mr. Reed:

Q. And, in this article you say—It is to the non-union Heinz employees—and you say:

"We are letting you know before time that every non-union member in the plant will have a limited time to join

Local 325, and if they do not join we will not be responsible for anything that occurs in front of the H. J. Heinz Company one of these days."

Don't you think that is threatening non-union employees?

A. No, not to my knowledge; no.

Q. You think that is all right?

A. Yes.

Q. That is your method of getting members? Is that one of your ways of getting members?

A. Yes, one of the ways.

Mr. Reed: That is all.

Redirect Examination.

By Mr. Kleeb:

Q. You also go on to say:

"This is not a threat but as we have explained above it is your own fault, that you brought this on yourself"?

A. Yes.

Q. "So leave your personal feelings at home, be wise and organize."

That is on there, too, isn't it?

A. Surely.

Mr. Kleeb: That is all.

Mr. Reed: That is all.

Trial Examiner Walsh: That is all.

(Witness excused.)

Mr. Kleeb: Father Rice.

Reverend Charles Rice, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Kleeb:

Q. State your name, please.

[fol. 645] A. Charles Rice.

Q. And your address, Father?

A. 3221 Fifth Avenue.

Q. Pittsburgh?

A. Pittsburgh.

Q. With what church are you associated, Father?

A. St. Agnes.

Q. You are a Catholic priest?

A. Catholic priest.

Q. Father Rice, did you personally have—Were you personally present at any of the conferences between the representatives of the Canning and Pickle Workers, Local 325, and the representatives of the H. J. Heinz Company?

A. Yes, I was.

Q. Can you state, as best you recollect, how many and about when?

A. I am sure I was at about three and I may have been at four, and in the week of the 22nd I think I was at one that was held on the 24th, and there was one held on a Saturday, and I was at one held on the following Monday, which I believe was the 28th.

Q. Of June?

A. June, 28th of June.

Q. What was the occasion of your being present at these meetings you mentioned?

A. I had been friendly with the union, had attempted to assist them at the time of their strike, and they asked me to sit in on the negotiations, that I might be of service to them at that time. I was there definitely as a friend of the union.

Q. At the meetings you attended what representatives of the company were there, as you recollect it?

A. Mr. Riley and Mr. Shinabarger. There were Mr. Laughlin there one time, and I think Mr. Ebbert two times, and Mr. Anderson was there one time.

Q. You heard, did you not, Father, the conversation back and forth between the representatives at the meetings you attended?

A. Yes, I did.

Q. And you heard the representatives of the company express themselves as to the company's position, did you not?

A. I did, yes.

Q. Did you at any time yourself enter into any discussion with anyone about the subject matter at issue?

[fol. 646] A. Yes, I did.

Q. Will you relate with whom and what you said?

A. I don't know if I can relate that exactly.

Q. As best you can recollect.

A. I had some conversations with Mr. Riley and some with Mr. Shinabarger, and Mr. Anderson and myself talked about Ireland the first time he came in. With Mr. Riley the conversations were concerning, I think, the wage scale, at times, and we discussed the reasonableness of the union's terms. I believe I discussed that. And I imagine—in the last couple of meetings I took quite a part in the thing, but I don't remember with just what points, it is so long ago, but one thing Mr. Shinabarger and I discussed was the wage question, one time.

Q. Do you recollect what happened at the meeting at which Mr. Anderson was in attendance?

A. Yes; I recollect it very clearly. When Mr. Anderson first came in there were—He spoke. It was just pleasantries, myself and he did; and then, during the negotiations, Mr. Anderson didn't speak at all. Mr. Anderson said nothing. He was there, by the way, as a man who was there at the request of Mr. Wilner. Mr. Anderson was brought in so that perhaps we could meet these people or some of these people who would have the final say.

Mr. Riley had said, he had brought out the point, he said, "You men are going to tell us, and we have to go and try to tell somebody else."

Wilner asked that we meet one of these men, because it seemed as if we were getting nowhere, and, as a representative of the union, he was very anxious that something definite would be done.

So he asked to see Mr. Anderson. Mr. Anderson was silent during this negotiation, which took pretty much the line the other negotiations did.

We would bring up our point, the union would, and the company would make their statements on it. There would be some wrangling back and forth, on different items, and then we would pass on to another part of the contract.

And after this went on, it seemed rather pointlessly, Mr. Wilner said to Mr. Anderson, "You have been sitting here, Mr. Anderson, without any comment. Have you anything to say?

And Mr. Anderson said, "I have been listening to what

[fol. 647] has been said. It is the same"—rather, he said, "I found nothing different from what the case has been presented to me by Mr. Riley and Mr. Shinabarger. You have said nothing new." He said, "The case still—the matter stands as it was." He said, "You have had the company's offer." He said, "We have the fullest confidence in Mr. Riley and Mr. Shinabarger, and what they say goes. You have heard the offer. Well, there is no change."

And he got up and rather dramatically he slapped the table and said, "You have heard our offer, gentlemen. Take it or leave it." And he walked out.

Q. Up to this time at the conferences you attended was the basis of discussion a contract which the union had presented, identified as Board's exhibit 18.

A. Yes; they used this contract as a basis of discussion, at any rate.

Q. Did you hear or observe any indication on the part of the company representatives at the times you were present that the company would not sign a contract with the union if the terms of a contract were reached?

A. Nothing to indicate that that was in the company's mind from the company men.

Q. Would you state what your impressions were at the time from the expressions of the company representatives in your presence as to whether or not the company representatives were dealing with the union representatives as an equal and as an equal collective bargaining agency with the company representatives?

Mr. Reed: This is objected to as calling for an impression and not a statement of fact. It would be immaterial, anyway. How can you compare equals? I don't know what he means by that.

Mr. Kleeb: If the Trial Examiner please, it seems to me that Father Rice knowing this union, being interested in it, and knowing it to be a young union, and sitting in several conferences with its representatives, observing the statements of the company representatives, mature men and men representing this large company, could certainly get impressions, definite impressions from the expressions of the representatives of the company as to what he thought the impression was he received as to whether these company representatives were dealing with the exclusive bargaining

[fol. 648] agency representatives as an equal collective bargaining agency equal with the company. I think he is capable——

Mr. Reed: Suppose he has impressions? They are not evidence.

Trial Examiner Walsh: Overruled. You may answer that.

A. Being a friend of the union, I will say frankly that I was depressed by these conferences because it seemed to me as if the union men were being put on the spot. I knew that they were desperately anxious themselves to reach an agreement. They definitely wanted to reach an agreement and to end the thing, and it seemed as though their efforts were not being met in the same spirit with which they were being put forth. For instance, the expression was, "Well, you men have to sell us." And I can't remember in the negotiations any point on which the company yielded, and I do remember many points in which the union yielded, and most of the progress was made when Mr. Wilner said, "Well, let us take this thing as a basis of discussion, and let us go through it and we will pass certain things."

The definite impression that I got from it was that the union men were, as I say, on the spot, that they were not being bargained as equals, and that the company's attitude was best expressed by Mr. Anderson's "Take it or leave it."

Mr. Kleeb: Cross examine.

Cross-examination.

By Mr. Reed:

Q. You are connected with the Catholic Radical Alliance, Father Rice?

A. Yes, sir.

Q. What is your position with that?

A. Well, the Catholic Radical Alliance is purposely kept in an organized group. You might say I am a sort of an agitator for it.

Q. Do you have anything to do with the Pittsburgh Catholic publication?

A. Nothing officially.

Q. Do you write the column, the Catholic Radical Alliance column for that?

A. Generally I do.

Q. You were on the picket line during the strike, were you?

A. Not exactly. I took some people down to go in the [fol. 649] picket line, and I stood around myself, but I didn't go in the picket line.

Q. Well, now, is your idea of negotiations that both sides have to be yielding at every meeting to make the negotiations in good faith?

A. Well, no, but that was rather a sustaining argument.

Q. But of course, the company may have yielded enough at other meetings since that you did not attend? You couldn't judge whether they yielded at the particular meetings you did not attend; could you?

A. That is true. I could judge what happened at those meetings—I could judge what happened in the previous meetings from the conversations at those meetings.

Q. Of course, you were entirely sympathetic with the union and you wanted to see the company yield to everything, didn't you?

A. Well, my primary interest in this is justice. The union means no more to me than the company.

Q. Well, you were very active for the union all through this strike and through these negotiations, weren't you?

A. Because I believed it represented justice.

Q. Yes, of course. You had a right to believe in it. But your desire at this meeting was to see the company yield on all of these things, wasn't it?

A. To an extent.

Q. Now, you know that at some of the meetings you attended, the union refused to enter into a contract for any definite term, didn't it?

A. I can't say that I do.

Q. Well, it refused to enter into a contract for any definite period of time, didn't it?

A. My memory isn't clear on that particular thing.

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 2 for identification.)

By Mr. Reed:

Q. I show you a column of the Catholic Radical Alliance of July 8th, which has been marked "Respondent's Exhibit 2" and ask you if that is the column that you write?

[fol. 650] A. I wrote——

Q. You wrote the column?

A. I wrote this thing, I am pretty sure.

Q. Now, I call your attention to this paragraph: "However, last week the union officials took the offer to the men in the mass meeting"—That is the Heinz offer?

A. Yes.

Q. "The workers, wanting peace, agreed to accept the terms, but for no definite period, and they refused to sign a contract with the company." You wrote that, didn't you?

A. Let me see it, please.

(Paper writing referred to was handed to the witness.)

A. (Continuing:) When did this——

Q. Does that refresh your recollection that it was the men who refused to sign a contract with the company?

A. Well, now, this particular information here—the last meeting, I believe, occurred——

Q. Well, first, you did write that article and that paragraph?

A. Yes, I did write that.

Q. And that must have been your impression at the time, was it not? That is, it was your impression that the men refused to sign the contract with the company?

A. Yes, but this impression——

Q. You can make whatever explanation you want to. Your answer is yes, is it?

A. Yes.

Q. So that there must have been some things that the men weren't yielding at this meeting too, weren't there?

A. Yes, oh, definitely.

Q. Any explanation you want to give, you go ahead and give it.

A. I have been trying to fix the time of this thing.

Q. The date is at the top of it, sir?

A. That's right. Is that July 8th?

Q. Yes.

A. Well, these impressions that I have here that the men refused to sign a contract, those impressions were gained from hearsay from conferences which occurred to which I was not a party. The last conference I was at was June the 28th and from went on from there on, it was just—I wasn't in close contact with the company.

[fol. 651] Q. But your sources of hearsay would be from the grievance committee, wouldn't it, it wouldn't be from the company?

A. From the union committee.

Q. From the grievance committee. You knew them, didn't you?

A. Yes.

Mr. Reed: I offer in evidence respondent's Exhibit 2.

Mr. Kleeb: No objection.

Trial Examiner Walsh: It may be admitted.

(The document heretofore marked "Respondent's Exhibit 2" for identification, was received in evidence.)

Redirect examination.

By Mr. Kleeb:

Q. Father Rice, the paragraph referred to by Mr. Reed in his Exhibit 2, you refer to a mass meeting.

A. Yes.

Q. People refusing to sign a contract, not to the grievance committee, isn't that a fact?

A. That's true.

Q. The paragraph reads: "However, last week the union officials took the offer to the men in a mass meeting. The workers wanting peace agreed to accept the terms, but for no definite period, and they refused to sign a contract with the company." Do you know whether or not it was the grievance committee that refused to sign a contract or the mass meeting, the employees, that didn't want to sign the contract in body and terms that the grievance committee put to them?

A. The mass meeting was what I believe. At that time, so far as I can—it has come back to me now—so far as I could gather, the sense was this: The workers—bear in mind that the workers were anxious for peace—they had got no concessions from the company and they were willing not to let—so far as I could figure, they were willing at the moment to *the* the thing ride, but later negotiations, I believe, have changed that. That was the way it stood at that particular time.

Q. What is the Catholic Radical Alliance, Father?

A. We are a group of Catholic Priests and laymen whose

primary belief is social justice. We believe the present [fol. 652] system is a mess and we are trying to do our best to help correct. We believe the Heinz A. F. of L. is a rather imperfect agency. We are anxious, in the interests of justice, to help wherever we can.

Q. In answer to Mr. Reed's question, he asked you if you wanted the company to yield everything. Do you want us to understand that if the demands of the union are exorbitant and unreasonable, you would have expected the company to yield to them?

A. If they wanted to take over the plant I believe I would have demurred.

Q. In other words, when you say "yield everything"——

A. There were restrictions.

Mr. Reed: Short of that you would be glad to see them get everything, is that right?

Mr. Kleeb: Just a minute, Mr. Reed.

The Witness: Not everything, no. I would still let the company retain certain things.

By Mr. Kleeb:

Q. The name Catholic Radical Alliance which is in the record raises this question which I would like you to answer. Is it in any way associated, affiliated with, or supported by the Communist Party or Russia or anything such as that?

A. No, it is not. It, financially, isn't very well supported by anybody.

Q. Is the Alliance opposed to Communism?

A. Very definitely; very much.

Mr. Reed: It's objected to.

Trial Examiner Walsh: Sustained.

Mr. Bostwick: That leads us into something——

Trial Examiner Walsh: Sustained.

Mr. Reed: I move to strike out the answer.

Trial Examiner Walsh: Strike it, Mr. Reporter.

Mr. Kleeb: That's all.

(Witness excused.)

Mr. Kleeb: Mr. Kracik, recalled.

FRANK KRACIK, a witness recalled by and on behalf of the National Labor Relations Board, being previously duly sworn, was examined further and testified as follows:

Further direct examination.

By Mr. Kleeb:

Q. Mr. Kracik, you testified previously in this hearing, [fol. 653] did you not?

A. Yes.

Q. Did you attend the conference between the union representatives and the management representatives July 1st of this year down at the Heinz Auditorium, I think it was, or Heinz office building, administration building?

A. Don't ask me the date. I will tell you the truth, but I can't remember the date, but I said I was at practically every conference with the exceptions of one or two when I was sent out of the city.

Q. Do you recall whether or not about that date, the first part of July——

A. That was the early part of July.

Q. — you received any information from the company regarding the signing or not signing of the contract and, if so, what occurred?

A. Well, that particular day the conference ended there and we went back to the office.

Q. Who went back to the office?

A. Everybody.

Q. What office?

A. At the union headquarters.

Q. And what happened?

A. And it was a few minutes later the man came up with a car and asked me if I would go back; I don't know what is his name; besides, I am not interested in those things—and he came up and asked me if I will go back to the factory, Mr. Riley wants to see me, so I said, "All right." I went back with him and he took me down to the plant and we went back up to the room where the conference was held before that and Mr. Riley says to me, "Well, Frank, you understand that the company is not going to sign any agreement." I says, "Well, it's all right with me." I says, "Whatever you people decide and whatever we decide is two different things."

Q. And just you and Mr. Riley were present when this was said?

A. That's all.

Q. Was any reason given why that wouldn't be signed?

A. No, no reason.

Q. That was the first knowledge or indication you had from the company that they wouldn't sign?

[fol. 654] A. Me and Mr. Riley sort of spoke over that before and he said, "It's nothing definite we are going to sign some kind of a contract but," he says, "you know the things from your other meetings and your other negotiations and you know what to do in cases like that." I said, "Well, that means that no agreement, that you people still living in hopes and whatever we decide, sometime, will be perfectly o. k. with us because we have no agreement with the company and there is no company that told us what to do because there is no understanding between us and the company."

Q. How long after this conference with the company, that is, you and the other members of the grievance committee, did this occur; was it an hour or day or two hours?

A. I would say a few minutes after the meeting.

Q. A few minutes after you left the conference you were sent for by Mr. Riley?

A. That's right.

Q. Did Mr. Riley explain to you why he was telling you when he hadn't told the general committee?

A. No, he just said it was not the policy of the H. J. Heinz Company.

Q. To do what?

A. To sign agreement.

Q. Mr. Kracik, will you state briefly, the general purpose of the Canning and Pickle Workers Local Union No. 325?

Mr. Reed: This is objected to as incompetent and immaterial. It's a labor organization and whatever it's purpose is, we will have to go into a lot of——

Mr. Kleeb: Does counsel for the respondent state for the record that the Canning and Pickle Workers Local Union No. 325 is a labor organization within the meaning of the Act?

Mr. Reed: Yes.

Mr. Kleeb: It is stipulated by and between counsel for the

Board and counsel for the respondent that the Canning and Pickle Workers Local Union No. 325 is a labor organization within the National Labor Relations Act?

Mr. Reed: Yes.

Mr. Kleeb: Cross-examine.

[fol. 655] Cross-examination.

By Mr. Reed:

Q. You made the statement when you were first told that there wasn't going to be any contract signed between the union and the company that that enabled you to come back and ask for more wages next week and next month or any time you wanted to, didn't you?

A. Yes.

Q. And you said that suited you?

A. I said that suited me, personally, yes.

Q. And you said, "I will be on your neck every week or so if you don't sign for a certain time," didn't you?

A. Yes, and I have all the rights to do it.

Q. And that was one of the things discussed and that was one of the risks the company ran in not fixing a long term contract?

A. That is.

Redirect examination.

By Mr. Kleeb:

Q. But these conferences were with Mr. Riley, personally.

A. That was personally between me and Mr. Riley.

Recross-examination.

By Mr. Reed:

Q. Mr. Shinabarger was there?

A. No, I beg your pardon, just Mr. Riley and myself.

Q. Didn't you make that statement in the presence of Mr. Shinabarger, if you didn't have a contract for a definite term you could come back at any time and that was all right with you.

A. Yes, but at this particular conference with Mr. Riley when Mr. Riley sent for me there was not anybody there with the exception of Mr. Riley and myself.

Q. But on other occasions you said that same thing to Mr. Shinabarger?

A. As I said, I spoke over that situation with Mr. Riley and Mr. Shinabarger was there and butting into it it was none of my business, because I made it clear to everybody I don't have anything to hide, and I will make the claim in front of this body there isn't anything Heinz Company can do to stop me that I can do against them any time I wish to.

Q. My question was, Mr. Shinabarger was not at that meeting, but didn't you make the statement in the presence of Mr. Shinabarger that if they didn't want a term agree-
[fol. 656] ment it was all right with you because then you could come back for raises any time you wanted to?

A. I said, if Mr. Shinabarger was butting into it it was none of my business. I don't know whether he was there or not.

Q. Answer my question. Did you make that statement to Mr. Shinabarger or in his presence, the statement that you didn't care whether they had a term agreement or not; that that would enable you to come back and ask for a raise any time?

A. I made that statement to Mr. Riley.

Q. And never to Mr. Shinabarger?

A. Mr. Riley was the man that we spoke over that and if Mr. Shinabarger was standing alongside of Mr. Riley that was none of my business and if he heard it, it's o. k. with me.

Q. He was standing there?

A. If he was, that's all right.

Q. Do you recall if he was standing there?

A. No, I can't recall that.

Q. And didn't you make that statement in the meetings?

A. Yes, I made that statement to Mr. Riley, direct to Mr. Riley.

Q. And didn't you make it in the meeting with the negotiating committee, you could come back any time and ask for a raise?

A. I made that statement, again, to Mr. Riley.

Q. But in the meeting with the other negotiators?

A. They were there, yes.

Q. That's what we have been trying to get at all this time. That's all.

Redirect examination.

By Mr. Kleeb:

Q. Mr. Kracik, was that your personal remark, or were you authorized to make such a remark?

A. No, it was my personal remark.

Q. Did the committee ever authorize you to speak for them in such a manner?

A. No, sir.

Q. Did the committee agree with you?

A. No, sir.

Q. Was it made plain by the committee that that, that they did want a signed contract?

[fol. 657] A. That's right.

Mr. Kleeb: That's all.

Recross-examination.

By Mr. Reed:

Q. Well, the committee were there when you made this statement, weren't they?

A. That's right.

Q. Nobody objected out loud; none of them, none of the committee objected?

A. I was not interested whether they objected or not.

Q. Nobody did object, did they?

A. I don't know.

Q. You would have heard them if any of your committee objected, wouldn't you?

A. Maybe, if they objected, they wouldn't object to me.

Q. Did you hear anybody object to the statement?

A. I did not.

Q. What is your position with the union?

A. My position is the international representative.

Q. And you are the one who organized this union?

A. That's right.

Q. And you have been with it in its dealings almost all the time ever since?

A. Yes.

Mr. Reed: That's all.

Trial Examiner Walsh: Mr. Kracik, as an international representative of the union, have you any official position in the local?

The Witness: No.

(Witness excused.)

Mr. Kleeb: If the Trial Examiner please, the Board has concluded it case with this exception: It had expected to put on the witness stand an expert witness on the subject of collective bargaining to give expert testimony relating to that subject and that subject is in issue in this case. I have been informed that this expert witness is ill and under doctor's care at the present time and I am resting my case asking permission, if necessary, that at the close of the defense or any time before that when this witness is able, physically, to appear and testify, that I will have the privilege of calling upon him to give his testimony subject, of [fol. 658] course, to respondent's counsel having the right to cross-examine the witness, of course, and to put in any defense testimony.

Trial Examiner Walsh: You are asking merely for a reopening for a witness.

Mr. Reed: I have no objection except I don't think the testimony is competent, in any event, and I shall make that objection, but if the Board's case is reopened to call this witness at a later time, it ought to be confined to that one subject so that if we are to prepare a defense for the other facts, we want that closed now. So if it is reopened, it will just be testimony on the subject of collective bargaining. I would object to the competency, of course.

Trial Examiner Walsh: That's understood, then. Mr. Kleeb, you do not know whether or not he will be well enough to be here on Monday; is there a possibility of that?

Mr. Kleeb: There is a possibility of that. I talked with his home the other day. I hope that's possible. I might also say, of course, Mr. Reed, I am not precluding myself by that statement from rebuttal testimony.

Mr. Reed: Oh, no; of course not.

Trial Examiner Walsh: We all understand that.

Mr. Reed: Yes.

Trial Examiner Walsh: The Examiner has to be in Washington tomorrow, so I have consulted with the attorneys for

the respondent and Board and we have agreed to recess these hearings until Monday morning next week, November 22nd, at 10 o'clock. The hearing will now stand adjourned.

(Whereupon, at 12:15 o'clock p. m., November 18, 1937, the hearing was adjourned to 10 o'clock a. m., November 22, 1937.)

The hearing in the above-entitled matter was resumed, pursuant to adjournment on Thursday, November 18, 1937, at 10 o'clock a. m.

Before: J. Raymond Walsh, Trial Examiner.

Robert H. Kleeb on behalf of the National Labor Relations Board.

Earl F. Reed, Esq., Donald W. Ebbert, Esq., and R. G. [fol. 659] Bostwick, Esq., of the firm of Thorp, Bostwick, Reed, and Armstrong, 2812 Grant Building, Pittsburgh, Pennsylvania, on behalf of the respondent.

Proceedings

Trial Examiner Walsh: The hearing will please come to order. Mr. Kleeb.

Mr. Kleeb: If the Trial Examiner please, at the conclusion of the last session I closed, reserving the right to place upon the witness stand an expert witness. In that I have that witness here, I would like to conclude the Board's case by calling this witness. Mr. Saposs.

David J. Saposs, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kleeb:

Q. What is your name?
A. David J. Saposs.
Q. Where do you live?
A. 1928 Belmont Road, N. W., Washington, D. C.
Q. And where are you now employed?

A. I am the chief economist of the National Labor Relations Board.

Q. What is your education?

A. I received my undergraduate and part of my post-graduate education at the University of Wisconsin and the remainder of my post-graduate work at Columbia University, New York City.

Q. Have you held any teaching positions?

A. Yes, I have held a number of teaching positions.

Q. Will you state them, please?

A. I have been assistant to Professor John R. Commons of the University of Wisconsin who is regarded as one of the outstanding authorities on labor economics. I taught at the University of Toledo. I was educational director director for the Amalgamated Clothing Association. I taught at Brookwood Labor College and at Columbia University; at Barnard College, summer sessions and in the extension division. I have also lectured at various colleges and universities.

[fol. 660] Q. What research and investigatory positions have you held?

A. Since starting on my career as a labor economist I held a number of research and investigatory positions as follows: I was research assistant at the University of Wisconsin; field investigator for the United States Commission on industrial relations; expert in charge of accident prevention and industrial service work for the New York State Department of Labor; investigator of the emigrant workers for the Carnegie Corporation Americanization Study; investigator for the Inter-Church World Movement Steel Strike Inquiry which studied the 1919 steel strike; director in special study of labor legislation in Kentucky for the Inter-Church World Movement; a director of the Labor Bureau, Incorporated, a commercial research agency; the head of the Labor Division of the Columbia University Study of Social and Economic Conditions of Post-War France, financed jointly by the Rockefeller Foundation and Columbia University and which necessitated residence in France and other parts of Europe for a considerable length of time; research associate of the 20th Century Fund, Incorporated; a director of the Company Union Study for the United States Department of Labor.

Q. Are you the author of any publications, Mr. Saposs?

A. Yes, I am the author and co-author of a considerable number of publications.

Q. Will you name some of those publications, please?

A. Co-author of the "History of Labor in the United States," financed by the Carnegie Institution of Washington and published by MacMillan; "Public Opinion and the Steel Strike," financed by the Inter-Church World Movement from funds supplied by John D. Rockefeller, Jr.; "Labor and the Government," financed by the 20th Century Fund which received the bulk of its funds from Edward A. Feileine, who was the head of the Feileine Department Store in Boston; and the author of a book "Left Wing Unionism," financed in part by the Social Science Research Council, an organization managed by academic people; "The Labor Movement of Post-War France," which was financed by the Columbia University and Rockefeller Foundation. I am the editor of "Ratings and Trade [fol. 661] Unionism," financed by the Workers Education Bureau of America; and "Governmental Protection of Labor's Right to Organize," a bulletin issued by the National Labor Relations Board.

Q. Have you personally contributed to any scientific publications?

A. I have contributed to the outstanding publications that concern themselves with the social sciences.

Q. Will you name some of these publications?

A. The "American Journal of Sociology," published at the University of Chicago, for a long time the semi-official organization of the American Sociological Association. The "American Economic Review," which is the official organ of the American Economic Association; "Quarterly Journal of Economics," published at Harvard University; a "Journal of Political Economy," published at the University of Chicago; and the "Annals of the American Academy of Political and Social Science," University of Pennsylvania; the "American Year Book," edited by Professor Albert Bushnell Hart of Harvard University and published by the New York Times; contributed to the "Dictionary of American Biology," which is edited by representatives of the various learned societies consisting primarily of professional people in the different universities of the United States in such fields as history, economics, sociology, an-

thrapology, political science, and so on, and contributed to the "Encyclopedia of the Social Sciences," edited by Professor Edward R. A. Seligman, who was formerly head of the economic department at Columbia University and his assistant editor was Dr. Alvin Johnson, formerly Professor of the American Economic Association.

Q. How long have you held the present position which you now hold with the National Labor Relations Board?

A. I have been chief economist of the National Labor Relations Board since December, 1935.

Q. Mr. Saposs, will you please set forth in detail the process of collective bargaining?

Mr. Reed: I would like to ask Mr. Saposs some questions before you proceed with the examination of the main subject, I take it, of his testimony.

Mr. Kleeb: Very well.

By Mr. Reed:

Q. You had nothing to do with the negotiations of this [fol. 662] contract, the Heinz contract, did you?

A. No.

Q. You weren't in any of the negotiations?

A. No.

Q. Were you advising the union committee at the time?

A. No.

Q. You know nothing about what went on then; is that right?

A. No.

Q. And you are giving your opinion of collective bargaining generally; is that it?

A. I am giving my opinion as a labor economist, a student of the subjects for about 20 or 25 years, on the question of collective bargaining, its functions, its processes, and how it is applied throughout the history of the United States.

Mr. Reed: The testimony of this witness is objected to for the following reasons: The witness states that he knows nothing about the negotiations that led to the making of this agreement and, therefore, he is incompetent to testify. The Act of Congress defines collective bargaining; there is no explanation necessary, and the opinion of the witness would not throw any light on what is collective bargaining,

particularly when the witness wasn't familiar with the negotiations that were going on at the time.

The proposed testimony would simply go into a general field of collective bargaining that is not germane to this case, and it is totally irrelevant.

Further, we have the anomalous situation here of the Labor Board acting as judge; the Labor Board acting as prosecutor, and now the Labor Board wants to be the witness, too; and it would be highly improper for the Labor Board official to state his view of collective bargaining in view of the fact that it is the Labor Board that has to decide this case.

Mr. Kleeb: Briefly, in answer to the objection, the Act does not define collective bargaining. It says it is an unfair labor practice to refuse to engage in collective bargaining. Therefore I think that an expert on the subject is very competent to testify in this hearing as to what are processes of collective bargaining as understood by him in his studies in this field of labor.

And the fact that the witness is the chief economist of [fol. 663] the National Labor Relations Board certainly does not make him incompetent to testify on the subject. He has stated in the record his experiences, his education, the broad education that he has, and simply because he is the chief economist of the Board does not deny him the right to give to this case his knowledge of the subject, and I think his testimony is not only competent but very material and very relevant to the issues herein set forth in this case.

Trial Examiner Walsh: The objection will be overruled. You may proceed.

Mr. Reed: Exception.

Mr. Kleeb: May I repeat my question?

By Mr. Kleeb:

Q. Will you please set forth in detail the process of collective bargaining?

A. In the process of collective bargaining as it has been practiced and understood throughout the whole history of collective bargaining from the very beginning of the country, there are various steps that follow. It means, in the first place, that there are two groups, a group of organized workers represented by an organization, usually referred to

as a union or a labor organization, which designates certain individuals as its agents to meet with an employer, or often with a group of employers, in order to negotiate the conditions of employment.

Those conditions of employment would cover the various matters pertaining to such subjects as wages, hours, other working conditions, as health, sanitation, seniority rights, and so on, depending on the particular issues that are raised by both sides in the process of negotiation.

Then usually in this process of negotiation there is also discussed, in addition to the substantive provisions, which are called these conditions of employment, such matters as the preamble, which states, in a general way, the attitude of both parties, why they came together to negotiate, why they have met, what they consider their relationship to each other, that they are both interested in establishing a stable relationship.

Then usually there is discussed the question of setting up certain machinery for administering the conditions that have been arrived at, because, as the conditions have been stipulated from time to time, certain differences might arise with reference to their application, and, since this is a mat- [fol. 664] ter in which the employees as an organized group and the employer have mutual and equal interests, machinery is usually set up for a mutual application and administration of the terms arrived at in the agreement.

Also there is provision usually made as to how differences might be handled if they can't be settled in the process of negotiation. In other words, if certain differences as to the meeting of certain terms or provisions arise, if both sides meet and can't agree as to how to adjudicate those differences, then provision is set up—is made for the setting up of some sort of machinery whereby the differences may be adjudicated as between these two parties.

Then, after all these matters are agreed upon, they are usually embodied into what is known as a written, signed, trade agreement in which the name of the labor organization is mentioned as well as the name of the employer, and which trade agreement is usually signed by a representative of the firm or the employer, and by the representatives of the labor organization, indicating, therefore, that this has been a negotiation by equal parties with mutual understanding as to the importance of this process of negotiation, and

that the results arrived at are now mutually agreeable to both sides.

Q. What is the fundamental purpose of collective bargaining?

A. The fundamental purpose of collective bargaining is to equalize, in so far as it is possible, the bargaining between an employer or employers and his workers.

It has been found that the individual worker is at a tremendous bargaining disadvantage when he applies for employment. He acts as an individual, he is competing against a great many other individuals who are seeking employment, and, therefore, is at a great disadvantage.

It has also been found that the average employee, although he may be exceedingly proficient in his particular trade or occupation, although he may be very efficient in the work he has performed, and highly skilled, he is not a skilled bargainer.

He bargains only at rare intervals, when he applies for [fol. 665] a position; the employer, on the other hand, is either himself a highly skilled bargainer or he has skilled bargainers. The employer is constantly engaged in buying, in selling, in hiring, in firing, in dealing with people of one sort or another, so that he is by necessity a highly skilled bargainer, whereas the individual employee necessarily has no experience and can't bargain, and isn't therefore, a skilled bargainer. In addition thereto, of course, it is possible, if employees bargain individually, for the employer to play one employee against the other.

The employer knows how many employees he needs. He has a better understanding of the labor market than an employee has who is busily occupied at his job, who hasn't the training, who hasn't the equipment, who hasn't the opportunity to inform himself as to the general situation in the labor market, so that the employer can very easily play one employee against the other to each employee's disadvantage.

Now, then, when employees are organized into a labor organization, they are on more equal bargaining footing, with the employer, in the sense that they now act as a group, and, therefore, the employer can't play one against the other in the sense that now they are in position also to select from among their own group or from other sources skilled people, people who have become trained and skilled

bargainers, people who now have the leisure and the opportunity to inform themselves as to the labor market, people who also know what it means to bargain, who know how to carry on negotiations, in addition thereto, people who probably can act more independently, that is, they can "talk up to" the employer. They aren't afraid that they might suffer if they do "talk up to" the employer, because, in the first place, they represent an organization which backs them, and, in the second place, they are often also on the payroll of that organization, so that they are freer to present and perhaps even more forcefully to present the point of view of the employees who are now acting through their labor organization collectively, and, in addition to this, they are freer to bargain, they are freer to discuss the issues that arise during the process of bargaining.

And then, of course, when all this is discussed and hammered out and threshed out on a give-and-take basis, then, of course, when it comes to embodying those terms into a [fol. 666] written, signed agreement, the organized employees are in a much better position to see that that agreement is properly drafted. That it actually describes as accurately as words can describe the particular conditions, the particular terms of employment that have been arrived at in the process of collective bargaining, and thereby the employees are likely to be on a more equal footing in bargaining with their employers.

Q. What are the essential elements of collective bargaining?

A. Throughout the history of collective bargaining, and as a result of the practices that have developed, based, therefore, on the experience of what has actually happened in the course of collective bargaining, certain elements have become known and regarded as absolutely essential in successful and effective collective bargaining, and those elements are as follows:

In the first place, the absolute right of the workers to freely without any interference on the part of the employer to organize themselves into labor organizations commonly known as unions. This is known, of course, as the right to organize. And unless employees have that absolute right, or unless employees are protected in that right to organize, it isn't possible to have collective bargaining, and certainly

effective and successful collective bargaining. And so it has been recognized throughout the whole history of collective bargaining that this is a right that the employees must have. Without that right they are in no position to even to begin to bargain against an employer.

Now, another element that has come out as a result of the history and experience of collective bargaining is that the employees must have a right to operate through this organization that they have founded. In other words, this organization which represents them now in collective bargaining, which they themselves have organized, and which they themselves are now directing and managing, must have the opportunity, must have the right to function for the purpose that it has been created; namely, to bargain on behalf of those employees with the employers or with individuals and an individual employer. If there is any interference with that organization in its attempt to function as a collective bargaining agency, then, of course, it is not in a position to fulfill its particular mission, to protect and promote the interests of its members. So that it is defi- [fol. 667] nitely recognized throughout the whole history of collective bargaining that employees must have this right, that this organization can function as a collective bargaining agent on the part of the employees. And it has been found that in order that such an organization can function effectively and successfully, it must be an organization that has stability, an organization that has strength, and nothing must be done to interfere with the efforts of that organization to attain stability, with the efforts of that organization to become strong enough to conduct its affairs, strong enough to hold the confidence of its members, strong enough to represent them effectively in the negotiations with the employers. And then it has been found that one of the essential elements of collective bargaining is that there should be a written, signed agreement embodying the terms of employment that have been arrived at in the process of negotiation between this labor organization, acting freely and unhampered, and the employer, and that those terms, after being carefully and meticulously stipulated in this written agreement and embodied therein, make a document which guides both parties in the labor relationship, and that document includes, therefore, the names of both parties. It mentions names by names; that is, it mentions the name of the employer by firm name or whatever other

designation accurately describes the employer; it mentions the name of the labor organization by name or whatever other designation that accurately describes that particular labor organization. And that agreement, then, is signed by both parties; that is by the representatives of both parties, and it has been found that when both sides have arrived at that state of mind where they are willing to sit down and negotiate on a give and take basis, where they are willing to stipulate in writing the terms of employment that they have arrived at and have embodied them in a written agreement, and where they are willing to sign that agreement, that practically invariably that agreement is very meticulously observed by both sides. There are very few instances where an agreement has been violated either by an employer or by a labor organization if these processes in collective bargaining have been followed and pursued.

So that the signing of a written agreement is advantageous both to the employees as well as to the employer in the sense that it creates stability, it creates mutual self-confidence, it develops now a psychology where both sides have respect for each other, where both sides have arrived [fol. 668] to a state of mind that they want to operate on an amicable basis in order that there should be this successful and effective collective bargaining.

An employer also profits in the sense that the written agreement definitely stipulates the time of duration, so that an employer knows for what length of time he will have certain labor costs and, therefore, he is in a position to contract with his customers on that length of time, because in that agreement there is the provision as to what the labor rates will be; there is a provision as to how long the agreement is to run.

Likewise, if the labor organization is well established, if it has stability, if it has strength, then it is an organization which joins with the employer to see that the employees observe the terms of the agreement. It is an organization that now aids the employer in the proper discipline of the employees because it has entered into this written and signed agreement.

Q. What would your opinion be as to the separability or inseparability of these elements of collective bargaining which you have just outlined?

A. These various elements which have just been described

as the whole history of collective bargaining has shown are absolutely inseparable. Unless it is possible to proceed on the basis that the organization formed by these employees can function without any interference as a collective bargaining agency, unless the terms are entered and embodied into a written, signed agreement, it has been found that it is difficult, and usually collective bargaining is not carried on effectively and successfully. Therefore, these elements are inseparable.

Q. In describing or giving these elements of collective bargaining, you mention recognition of the union. Does failure on the part of the employers to recognize the union involved in their particular case lead to industrial controversy?

A. Yes. There have been a number of studies made, particularly by the United States Department of Labor, which indicate conclusively that the failure of an employer to recognize a labor organization and to bargain with it has resulted in industrial strife, labor unrest, as well as strikes and lock-outs.

Q. Mr. Saposs, are you acquainted with bulletin No. 1 of the National Labor Relations Board, Division of Eco- [fol. 669] nomic Research? I hand you a copy of it.

A. I am. I directed the preparation of this bulletin.

Q. That is a public document?

A. It is a public document issued by the Government Printing Office in Washington, D. C., in 1936.

Q. Is there, in that document, any corroborative evidence of what you have just testified to with reference to the elements of collective bargaining and failure to recognize the union, to cause industrial unrest?

A. Yes.

On pages 105 and 106 there is statistical data prepared by the United States Departments which illustrates the point I have just made. I would like to call attention to the heading on page 105, which is entitled "Statistics of Strikes Due to Resistance of Employers to Labor Organization", and the bottom table on that page, entitled "Major Issues Involved in Labor Disputes beginning in Each Year 1919 to 1934, by number and percent of total".

Now, in this table there is a column entitled "Organization", which is a brief way of indicating that the major issue in the strikes enumerated herein were under this ques-

tion of organizing, the right of workers to organize themselves into labor organizations, and in this column there is given the percentage of strikes in which this was the major issue from 1919 to 1934, and we find, for instance, that the lowest percentage, in 1921, was 17 percent of the strikes in which the major issue was this right to organize. The highest percentage, in 1934, was 46 percent of the strikes in which the major issue was the right to organize.

The figures for 1934 were provisional figures; they were not completed at the time this bulletin went to press. However, since then the United States Department of Labor has issued additional strike figures, bringing the data up to June 30, 1937, and the percentage of strikes in which the major issue was this right to organize run, from 1935, as follows:

For 1935 47 percent of the strikes;

For 1936 50 percent of the strikes, in which the major issue was the right to organize for collective bargaining;

For 1937, only from January through June, that is, for the half year of 1937, 54 percent of the strikes centered around this major issue of the right to organize for collective bargaining.

[fol. 670] In other words, the employers refused, as is known in the terminology of labor economics, to recognize these unions as the collective-bargaining agencies, as the spokesmen of their employees, and, as a result of that, these number of strikes occurred on the part of their employees.

We also have, on page 108, a chart which graphically presents the same point, that is, simply indicating on a spacial basis the proportion of strikes on which the major issue was the right to organize and a proportional basis on which the major issue was wages, and so on.

Mr. Kleeb: I wish at this time to offer in evidence as Board's exhibit 24, bulletin No. 1 of the National Labor Relations Board, referred to by this witness in his testimony.

Mr. Reed: Objected to as incompetent, immaterial, and not relevant.

Trial Examiner Walsh: Objection overruled. It may be received.

(Thereupon the document above referred to was marked as Board's Exhibit No. 24 and received in evidence.)

By Mr. Kleeb:

Q. In your opinion, is the refusal of an employer to insert the union name in an agreement as a party to the agreement bargaining in good faith and conducive to successful bargaining?

Mr. Reed: Same objection to this.
Trial Examiner Walsh: Objection overruled.

A. May I have the question?

Mr. Kleeb: Will you read it?

(Thereupon the pending question, as above recorded, was read by the Reporter.)

A. No.

By Mr. Kleeb:

Q. Did you answer that?
A. No, it is not bargaining in good faith as understood by the history of collective bargaining.
Q. Why, in your opinion, is it important to name the union in the agreement as party to the agreement?
A. It is important to name the union in the agreement because, if the union is to function effectively and successfully, it must be given due credit for what it has accomplished in the process of negotiation. If an employer re- [fol. 671] fuses to permit the name of the union in any document which embodies the terms of employment which have been negotiated, an employer is, in that way, denying the credit to which a union is entitled because it has been the agency which has secured and negotiated those terms.

A situation of that kind is likely to create a great deal of confusion in the minds of the members, in the minds of the workers, in the minds of the employees of that particular employer.

Those people are likely to be in doubt; they won't know whether it was their organization which actually secured those terms, if it was their organization that had represented them, or whether it was somebody else. It's possible to spread rumors, it's possible, in various ways, to muddy the waters in such a way that it would turn out to be to the disadvantage of the labor organization which is now there as the collective-bargaining agency, as the spokesman and

representative of the particular union, and it has been found, throughout the whole history of collective bargaining, as I have already indicated, that an organization, in order to function effectively, in order to function successfully, must develop stability, must develop strength, must have power to go through with the particular functions entrusted to it.

An action of this kind, whether intentionally or not, on the part of the employer, tends to keep the organization weak. It tends to keep the organization in an ephemeral state, and no organization that has those particular features, that is, that is ephemeral, that is weak, can protect and promote the interests of its members as well as an organizations which has stability, which has substance, which has strength.

Q. I wish to hand you what is in this record as Board's Exhibit No. 22, identified as a Labor Relations Bulletin which was posted in the middle of August of this year on the bulletin boards of the Pittsburgh Plant of the H. J. Heinz Company. Will you please go over it and state if there is any technical term in labor relation terminology for such a labor relations bulletin as I have handed you and as evidenced by that exhibit?

A. A document of this type issued by an employer or posted on a bulletin board or made available in other form, particularly if it has the signature—I do not see the signature here—has become known in the terminology of labor [fol. 672] relations as a unilateral agreement.

Q. What is the meaning of that term in labor terminology?

A. A unilateral agreement in labor terminology means that an employer is so advantageously situated that he can decide in whatever form he pleases how to notify his employees of the terms of employment. It means, of course, that the labor organization is either very weak, or is placed at a disadvantageous position and that the employer, by issuing this type of a document, intends to maintain that organization weak and intends to keep it in that disadvantageous position. As a result of that, we really don't have collective bargaining. We have simply something that is handed down by the employer, something which he can take back at any time; something which is not now agreed upon and observed mutually by the labor organization and the employer.

Q. What would you say is the usual background of an employer who insists on resorting to this type of procedure, this unilateral agreement?

A. All of my studies and the studies of labor economists in general and the history of these unilateral agreements reveals conclusively that it is usually the employer who has been anti-union in his attitude; who has always fought unions; who has refused to recognize and deal with unions, who insists on unilateral agreements. Employers who have had dealings with unions, who meet unions in good faith, don't insist on a document of this kind, but take it for granted that it is the normal procedure to embody the terms of employment arrived at from the process of negotiation into a written, signed agreement where both parties are named, where both parties sign the agreement on an equal basis.

Q. Do you know when this practice, this unilateral agreement practice, was introduced to a great extent?

A. It was introduced to a considerable extent in the immediate post-war period when there was a general, powerful so-called open shop movement on the part of employers, open shop movement, of course, meaning anti-union movement, meaning a movement on the part of employers to either prevent employees from organizing into unions or to break those unions if the employees have succeeded in organizing themselves into them, and the employers found it was necessary to put things down in writing; introduced this [fol. 673] kind of a document. Since the new type of legislation, beginning with 1933, in which it has been established in law that the workers have a right to organize themselves, that they have a right to bargain collectively with their employers through their own labor organizations, this kind of a document has now become so widespread in use, insisted upon, again, by the employers whose whole history, whose whole background has been resistance to deal with labor organizations, opposition to labor organizations and unions, when their employees attempted to organize into those unions.

Q. What form has that movement taken?

A. That movement, in the history of industrial—in the industrial history of the United States and in the history of labor relations, has taken various forms. Originally, employers who opposed labor organization, insisted that each employee bargain with them as an individual, but gradually

as the public, particularly, became cognizant of the unfairness of the position of the employers, by realizing, of course, that an individual employee was at a bargaining disadvantage in bargaining against a powerful employer who may employ hundreds or thouhands or tens of thousands of employees, the employers countered by saying they would be willing to meet with committees of their employees, but not with representatives of labor organizations and, particularly, did the employers emphasize that they would not meet with representatives of their employees who were not on the payroll of those employers; whereas, of course, employers themselves have always hired people who might be called outsiders, as attorneys and so on, when they carry on any business transactions, but they refused to meet anybody except committees of employees who, of course, had to leave their bench to go into the front office where they weren't accustomed to go, of course, and to meet with the high executives whom they probably only saw drive up in their cars to the office, or they may have seen them somewhere on the street. In other words, there was a situation there which certainly didn't make for equality in bargaining, where a group of employees whose chief life work has been working at the bench or at the machine, suddenly yanked out and brought into the front office and sit down on polished chairs and around a mahogany table, and so on, but that was all that the employer would consent. Then, at a [fol. 674] later period, particularly during the war period, when the unions took advantage of the slogan of the War for democracy by saying, "We are going to have political democracy; we ought to have industrial democracy," the workers succeeded in popularizing that to such an extent it received public approval and the employers, therefore, had to concede that just committees, haphazardly picked out, did not meet the situation, and in order to counter this public sentiment and this demand, we find a sudden outcropping of company unions. These organizations dominated, sponsored, financed and founded by employers and which have now become known as company unions and so, therefore, in the immediate post-war period, particularly when there was this great labor unrest, when the unions were very active, we find a sudden outcropping of these company unions throughout the country definitely sponsored by the employers. The constitutions, the plans, were usually handed down by the employers, presented to picked committees of em-

ployees although, sometimes, these committees might be elected and then—adopted.

In case of firms that have chain plants throughout the country the same plan was put into effect in every plant indicating, of course, that there was no spontaneity of action, insofar as the employees were concerned; indicating, clearly and conclusively, that it was something that was initiated, originated by the employer who simply handed it down to his employees who, being unorganized, being unsophisticated, not aware or informed, found it was the best thing to do, to accept them and so the employers presented these company unions as an agency which they said would serve to protect and promote the interests of the employees in the process of collective bargaining. Then, of course, came the new legislation beginning with 1933 which outlawed company unions in the sense it made it an unfair labor practice for employers to in any way interfere with the rights of the workers to organize, for the employers to finance labor organizations; it forbade them to interfere, in other words—and so, we find, more recently, two develpments; one of them a re-adaption of the company union. For instance, originally the company union plan was a document entered into between the employer and the employ-[fol. 675] ees. Now, the company union plan has been re-adapted as though it were a document concerning only the employees.

The financial support which employers have granted is, at least, no longer in prominence in so far as the plan read, as the constitution plan reads.

In other ways company unions have been adapted. In other instances we have suddently found that the company union has disappeared and sort of phoenix-like there has come into existence an organization known or called the independent union, which is usually sponsored by the people who were officers of the company union.

The constitution is usually drafted by some attorney who has never had any contacts with labor organizations, who doesn't know what labor organization is. He suddenly becomes a specialist and drafts the constitution.

Various provisions are made. Often no provision is made for dues, which is, of course, an essential means whereby regular unions raise funds to finance their activity.

Quite often this young attorney, who may or may not have a visible source of income, generously offers to offer

his services without compensation. Not infrequently he offers to take money out of his pocket—at least, he says so—to pay for the printing of the constitution, and for other finances.

Another means for raising funds, both for these readapted company unions as well as for the so-called independent unions, where there is no provision for dues, is to conduct social affairs.

In other words, to raise the finances for an organization which has a vital economic function on the basis of charity instead of on the basis of support by those who are members of the organization and those who are the ones who benefit from the organization.

These have been some of the developments, some of the methods and procedures that have come into existence as a means of making it more difficult for the workers to organize themselves into their own labor organizations so that they could bargain collectively with the employers through those organizations.

Q. Mr. Saposs, are you acquainted with this document I hand you (handing a document to the witness)?

A. This is a document, a photostatic copy of a document which we obtained from the Bureau of Labor Statistics, a [fol. 676] branch of the United States Department of Labor, and is a written, signed trade agreement between the Johnstown Packing Company and the local union of the Amalgamated Meat Cutters and Butcher Workmen of North America, affiliated with the American Federation of Labor.

Q. Is that form typical?

A. This form of agreement is one type of agreement that is followed where employers deal with unions and embody the terms arrived at into signed, written agreements.

Q. I hand you two other documents and ask you if you are acquainted with either of them or both and, if so, what are they?

A. These are also photostatic copies of agreements which were made from the copies that we got in the files of the Bureau of Labor Statistics of the United States Department of Labor.

One of them is an agreement between the Amalgamated Meat Cutters and Butcher Workmen of North America, A. F. of L., Local Union No. 637, in the American Packing and Provision Company, of Ogden, Utah.

The other one is an agreement between C. A. Young, Edward Hahn Packing Company, and others, and the Local Union No. 268 of Amalgamated Meat Cutters and Butcher Workmen of North America, A. F. of L.

Mr. Kleeb: I wish at this time to offer the three documents as identified and in the order of their identification as Board's exhibits 25, 26, and 27.

Mr. Reed: These are objected to as incompetent, immaterial, not shown to have been brought to the attention of any of the people in this controversy, not embodying the same facts, the same organization.

There is no more reason for putting these in than 50 other union contracts. They just have nothing to do with this case whatsoever.

Mr. Kleeb: On the contrary I believe they show typical trade agreements, and I offer them for the further reason that I wish this expert to make a comparison which I will question about, between one of these three, and also the Labor Relations bulletin of this Heinz Company which is in evidence.

Trial Examiner Walsh: The objection is overruled; they [fol. 677] may be received.

(Thereupon the documents above referred to were marked as Board's Exhibits Nos. 25, 26, and 27 and received in evidence.)

By Mr. Kleeb:

Q. I hand you another document, Mr. Saposs, and ask you if you can identify it.

A. This is a certified copy of a—of figures taken from the files of the United States Bureau of Labor Statistics, and pertain to written agreements by managements and employee representatives of company unions.

Q. This is the Department of Labor's statistics on trade agreements?

A. Yes. On trade agreements; a certified copy.

Mr. Kleeb: I wish to offer this in evidence as Board's exhibit 28, as proof of the fact that these are not isolated cases, Board's exhibits 25, 26, and 27, but that there are statistics on many such trade agreements.

Mr. Reed: Objected to as incompentent, immaterial, and not proving any such fact.

Trial Examiner Walsh: Objection overruled. It may be received.

(Thereupon the document above referred to was marked as Board's Exhibit No. 28 and received in evidence.)

Trial Examiner Walsh: May I see that?

(The document was handed to the Trial Examiner.)

By Mr. Kleeb:

Q. Mr. Saposs, I would like to place in your hand Board's exhibit 22, which I mentioned previously as the labor-relations bulletin posted by the Heinz Company, and Board's exhibit 25, which you identified as a trade agreement between the Johnstown Packing Company and a local union of the Amalgamated Meat Cutters and Butcher Workmen.

I want you to make a comparison of the two agreements. Would you care to have any time to read those, to compare them?

A. If I may, please.

Mr. Kleeb: May I ask for a few minutes recess to give Mr. Saposs time to make a comparison?

Trial Examiner Walsh: Yes; five minutes recess.

[fol. 678] (Thereupon a short recess was had.)

Trial Examiner Walsh: The hearing will come to order. Mr. Kleeb, will you proceed?

By Mr. Kleeb:

Q. Have you made the comparison, Mr. Saposs?

A. I have.

Q. Will you state your finds from that comparison?

A. I find——

Mr. Reed: I make the same objection as has been made before.

Trial Examiner Walsh: Note that objection. It is overruled.

Mr. Reed: Exception.

A. I find that there is a marked difference between the bulletin issued by the Heinz Company and the trade agreement entered into between the Johnstown Packing Company and the local union of Amalgamated Meat Cutters and

Butcher Workmen of North America. The outstanding differences are as follows:

The document issued by the Heinz Company reads: "Labor Relations Bulletin, Pittsburgh Factory, H. J. Heinz Company."

The agreement between the union and the Johnstown Packing Company reads "Memorandum of Agreement."

There is also a very marked difference between the introductory paragraphs of both of these documents. The introductory paragraph to the bulletin issued by the Heinz Company reads as follows: "According to the provisions of National Labor Relations Act, we have bargained with the certified collective bargaining agency for our employees (not including, however, foremen, assistant foremen, who are paid on a monthly basis, policemen, outside truck drivers, office employees or factory employees paid on a monthly basis) and the following understanding has been reached."

The agreement, trade agreement, the first paragraph of the trade agreement, reads as follows:

"Made and concluded this 4th day of June, A. D., 1937, by and between the Johnstown Packing Company, hereinafter called the company, and the local union of the Amalgamated Meat Cutters and Butcher Workmen of North America (A. F. of L.) hereinafter called the Union, excluding therefore foremen in charge of departments, outside sales-[fol. 679] men, inside officers and truck drivers."

Another marked difference is what is ordinarily called in labor relations terminology the termination clause, which in the union agreement is clause 11 and reads as follows: "This agreement shall remain in full force and effect from year to year subject to clause 5, and there shall be no strike or other ceasing of work."

The last clause which is in the bulletin issued by the Heinz Company reads "The wage rates and other conditions hereinabove set forth shall remain in effect until further notice."

The additional difference is that the document or bulletin issued by the Heinz Company contains no signature of any kind. The union agreement is signed, on the one hand, by a representative of the company mentioning the company by name as well, and, on the other hand, by a representative of the union mentioning the name of the union.

Now, then, these differences illustrate quite clearly what is meant in the history of labor relations by a union agreement and by a so-called unilateral statement. On the one hand, it is a bulletin handed down by the employer as the wording, of course, of the introductory paragraph clearly indicates, the conditions of employment as stipulated therein can be changed on notice, meaning, therefore, that they can be changed by the employer by giving notice. In the union agreement on the other hand, the first paragraph clearly and specifically stipulates that there are two parties meeting on an equal basis in order to negotiate an agreement in order to negotiate the conditions of employment. And it further shows that if there are to be any changes in that agreement, it is a matter that must be taken up and negotiated by these two parties that have entered into the agreement. And in addition, too, mentions that this agreement is one that has been entered into between a regular constituted union with the name given and description, and so on, and an employer with name given and description. It is signed by both parties, indicating, of course, that both parties have obligated themselves to observe those terms of the agreement.

That is the difference between a document that is handed down by an employer and an agreement negotiated by two equal parties, one a labor organization, the other an em-
[fol. 680] ployer.

Q. What is the prevailing practice in collective bargaining with reference to signed trade agreements?

A. The whole history of collective bargaining reveals that it is the prevailing, dominant, and, indeed, it is the normal practice that where an employer deals with a union, that after they have negotiated the conditions of employment, that those conditions are embodied into a written, signed agreement and, as a matter of fact, it is taken for granted by both sides that such a procedure will be followed. It is an accepted practice, so that there is no discussion, there is no debate, there is no controversy over the form of the agreement; that is, whether that agreement is going to be one that will definitely indicate that it is entered into by an employer and a labor organization, that it will be signed, that it will mention the names, and so on. There may be long, drawn-out negotiations, but the negotiations are over a substantive terms, over the wording of the agreement

with reference to terminology which, of course, has to be very carefully drawn and stipulated. There may be negotiations, for instance, over the kind of machinery that should be set up to administer the agreement, and negotiations over the kind of machinery that should be set up to adjudicate the agreement when differences arise that can't be settled in negotiation, but the debate is as to the form of an agreement a thing that rarely arises. It is taken for granted by both sides, that here is a form of a document which stipulates, which indicates by its very nature that there are two equal parties to the negotiations who have now arrived at the terms of employment which are embodied into a written and signed trade agreement mentioning the parties by name.

Q. Mr. Saposs, the testimony in this case discloses the fact that the Labor Board conducted an election on June 8th of this year, the election being based upon an understanding, a memorandum of understanding involving the company and what is known in this record as the Heinz Employees Association and the A. F. of L. Union involved here. In that memorandum of understanding, the company agreed after the election was held to recognize the winner as an exclusive bargaining agency, and then the memorandum says, in the fourth paragraph, Board's Exhibit 16, "The company agrees to commence negotiations for the purpose [fol. 681] of reaching an agreement affecting wages, hours and working conditions."

Would you state, so far as labor terminology is concerned, when the word "agreement" is used, what is in labor terminology, in labor relations, what is generally meant?

A. In labor relations——

Mr. Reed: Objected to for the same reasons heretofore assigned.

Mr. Walsh: Overruled.

Mr. Reed: Exception.

A. (Continuing:) In labor relations terminology when the term "agreement" is referred to, unless there are any qualifying remarks or statements, it is always taken for granted that it is a written signed agreement, and all the labor terminology always talk of agreements without in any way describing them any further.

Q. Have you any figures available relating to this prevailing practice that you have spoken about of signing these trade agreements?

A. It is very difficult to obtain cover-all figures; that is, it is difficult to obtain figures that would give the exact number of employers, the exact number of unions, the exact number of employees that would be affected by written signed agreements. That is such an expensive and comprehensive undertaking that even the United States Department of Labor hasn't found it feasible to compile such statistical data. However, we have statistics which would be regarded as sample figures; that is, that are indicative of what is the prevailing practice, what is the dominant practice with reference to signing written agreements between employers and trade unions. Some of those figures I have before me.

For instance, in 1911, the Massachusetts Bureau of Labor Statistics made a study in order to get an idea of what is the practice with reference to written signed agreements. Now, the Massachusetts Bureau of Statistics created in the United States, and, of course, Massachusetts is the oldest industrial state. So we have there that particular correlation. The man who headed up the bureau originally was Carol D. Wright, one of the outstanding labor economists in the United States. Later on he became the Commissioner of Labor, which meant that he was the head of the United States Bureau of Labor Statistics. Now, this bureau of labor statistics has a reputation for making competent and [fol. 682] reliable studies, as all government agencies do.

And in 1911, they made a study. They circularized 1,226 local unions and asked them various questions in order to find out what the practice was. 530 of these reported that they had signed agreements with one or more employers; only 42 reported verbal agreements with one or more employers. Now, 259 of the locals that were circularized reported signed agreements with all firms in their jurisdiction; that is, a local union like a carpenter's local or a printer's local has jurisdiction over carpenters, and so on, said that they had the signed agreements with all the employers in their jurisdiction operating in a particular area in Massachusetts.

An additional 103 reported signed agreements with more than one-half but not all of the firms in their jurisdiction.

In other words, 362 of the 530 locals that reported signed agreements with over 50 per cent of the firms had signed agreements with over 50 per cent of the firms within their jurisdiction.

Now, this study revealed additional interesting facts. It showed that the strongest unions on the basis of membership were the ones that had the written signed agreements. And we have here the average membership of the u-ions that answered this questionnaire. Those unions having written agreements averaged a membership of 199. Those unions having verbal agreements averaged a membership of 184. Unions that had no agreement, averaged a membership of 110. That indicates that the strength of the union is a very important factor in carrying on effective and successful collective bargaining.

Q. I hand you two typewritten pieces of paper, Mr. Saposs. Can you identify them?

A. One of these is an excerpt from the 42nd Annual Report of the Statistics of Labor, 1911, by the director of the Massachusetts Bureau of Statistics, page 124, and is entitled "Trade Agreement Statistics in Massachusetts—1911."

The other one is an excerpt from the same report, page 120, and is entitled "Shop Notices."

Q. I hand you a book and ask you if that is the book from which these excerpts were taken?

A. Yes, this is the publication of the Bureau of Statistics issued by the Commonwealth of Massachusetts, 42nd Annual Report, from which these excerpts were lifted.

[fol. 683] Q. And that document, as far as you know, is a public document?

A. Yes, it is a public document.

Mr. Kleeb: I wish to offer in evidence these two excerpts identified by the witness, as Board's Exhibits 29 and 30.

Mr. Reed: We make the same objection that was made heretofore, and in addition, I can't see how the industry reports of Massachusetts in 1911 have anything to do with the Heinz contract in 1937.

Trial Examiner Walsh: The objection is overruled. The exhibits may be received.

(Thereupon the documents above referred to were marked as Board's Exhibits 29 and 30 for identification, and were received in evidence.)

By Mr. Kleeb:

Q. Mr. Saposs, are you acquainted with this publication (indicating)?

A. Yes. This is a bulletin issued by the United States Department of Labor, Bureau of Labor Statistics, No. 468, of the conciliation and arbitration series, entitled "Trade Agreements, 1927," and issued through the United States Government Printing Office, Washington, 1928.

By Trial Examiner Walsh:

Q. What is the number of that bulletin?

A. 468.

Mr. Kleeb: No. 468.

By Mr. Kleeb:

Q. Mr. Saposs, what is contained in it? What does it talk about, if you know?

A. The United States Government through its Bureau of Labor Statistics and its Department of Labor, as well as Governmental agencies entrusted with similar responsibilities for a large number of States, particularly important industrial States, and students of labor subjects, have become keenly interested in this development of written, signed agreements, and, as a result of that, a wide range of studies have been made on the question of written, signed agreements.

The United States Bureau of Labor Statistics, therefore, felt that it ought to select samples of written agreements [fol. 684] entered into between unions and employers, and has issued a number of bulletins.

This one here, "Trade Agreements, 1927", is one of those bulletins issued, in which there are sample agreements. It is not an exhaustive compilation, because, of course, that might entail volumes and volumes. It is merely sample agreements, and, in the table of contents, there is a list of the industries where these agreements were in operation. The industries are arranged alphabetically, and I don't believe it is necessary for me to read them, except to say that upon studying this table of contents I find that it covers practically all important industries in the United States, in 1927.

I want, however, to call attention to one section here, which contains agreements entered into between local unions of the Amalgamated Meat Cutters and Butcher Workmen of North America, and employers, since that is the parents organization of the union involved in this present hearing.

We find here a list enti-led "Meat Cutters & Butcher Workmen, and others," pages 100 to 103. There are sample agreements entered into by local unions and employers, the local unions affiliated with the same national organization that this local involved in this case is.

Q. Since 1927 has there been any public information on trade agreements?

A. Since 1927 the United States Bureau of Labor Statistics instead of issuing bulletins containing sample agreements has published from time to time in the Monthly Labor Review, which is the official publication of the United States Department of Labor, descriptions of collective-bargaining arrangements between employers and unions in various industries, and these descriptions appear periodically, that is, at intervals.

Q. I hand you these documents and ask you if they are the reprints to which you make reference.

A. Yes, these are reprints of the articles that have appeared in the Monthly Labor Review, issued by the United States Department of Labor.

Q. And how are these best identified by anyone who wishes to see them or get them?

A. I believe it would be best to read in the title and the date of publication from each one. I believe that would be the better way. There are copies available to be introduced as exhibits.

[fol. 685] Mr. Kleeb: Well, I will offer those in evidence.

By Mr. Kleeb:

Q. Just identify them, will you, please?

A. One of them is entitled "Collective Agreements in the Petroleum Industry"——

Mr. Bostwick: Would you be kind enough to separate them and identify them so we can get them straight?

(Thereupon the documents above referred to were marked as Board's Exhibits Nos. 31-A, -B, -C, -D, -E, F, and -G for identification.)

Mr. Kleeb: These reprints, as identified by this witness, are now being offered in evidence as Board's exhibits 31-A, -B, -C, -D, -E, -F, and -G.

Mr. Bostwick: That bulletin No. 468, does that go in?

Mr. Kleeb: No, sir.

Mr. Reed: The same objection.

Trial Examiner Walsh: Overruled.

Mr. Reed: Exception.

(Thereupon the documents heretofore marked as "Board's Exhibits Nos. 31-A, -B, -C, -D, -E, -F, and -G" for identification were received in evidence.)

The Witness: Board's exhibit 31-A is entitled "Collective Agreements in the Petroleum Industry" and is a reprint from an article that appeared in the Monthly Labor Review, February, 1937.

Board's exhibit 31-C is entitled "Collective Bargaining in the Hosiery Industry, 1936," and is a reprint from the Monthly Labor Review, September, 1936.

Board's exhibit 31-D is entitled "Collective Bargaining in the Glass Industry, 1935-1936," and is a reprint from the Monthly Labor Review, May, 1936.

Board's exhibit 31-E is entitled "Union-Management Relations in the Women's Clothing Industry, New York Industrial Area, 1936," and is a reprint from the Monthly Labor Review, July 1936.

Board's exhibit 31-F is entitled "Collective Bargaining by Amalgamated Clothing Workers" and is a reprint from the Monthly Labor Review, July, 1937.

Board's exhibit 31-G is entitled "Collective Agreements in the Brewery Industry, 1935," and is a reprint from the [fol. 686] Monthly Labor Review, April, 1936.

These are samples of the reprints of the articles that are appearing in the Monthly Labor Review, describing collective-bargaining arrangements in various industries.

By Mr. Kleeb:

Q. Have you any other statistics on this subject?

A. Yes; I have gathered some additional statistics in order to illustrate the widespread nature of entering into written, signed agreements between employers and unions. For instance, in the railroad industry, on June 30, 1936, the National Mediation Board, which is the agency entrusted

by Congress to administer the Railway Labor Act of 1934, reports that it has on fine 3,485 written trade agreements entered into between employers and labor organizations in that industry.

In the previous fiscal year 909,249 employees of class I railroads were covered by agreements with national trade unions.

In the case of the newspaper industry there are 440 newspaper establishments in the United States and Canada which are members of the American Newspaper Publishers' Association and within the territorial jurisdiction of some of the locals of the International Typographical Union, and 344 have signed agreements with that union, in June, 1937.

Other unions have had similar signing of agreements. The Machinists' Union has approximately 2,000 agreements signed with employers.

The Brewery Workers' Union reports 1,141 written agreements.

The Steel Workers Organizing Committee has negotiated 379 written trade agreements covering 406,020 workers in the steel industry and allied products.

The United Automobile Workers report 400 companies, including all the major automobile parts manufacturing and all major automobile manufacturers except Ford, as having signed agreements with them, as of April, 1936.

Nearly two thirds of the 135 locals of the United Rubber Workers reported at their annual convention a few months ago that they had one signed agreement during the last year.

Q. Do you know of any document of any association of manufacturers which has other evidence on collective bargaining, the practice of collective bargaining, and the rela- [fol. 687] tion of it to the signing of trade agreements?

A. The National Association of Manufacturers, the outstanding employers' association, regarded particularly as the spokesman of the employers who have been anti-union in their attitude, issues a bulletin on labor relations, and in one of those bulletins it has made an analysis of agreements entered into between employers and unions.

Q. I hand you a document and ask you is that is a copy of the bulletin to which you refer.

A. This is the copy of the bulletin, entitled "N. A. M. Labor Relations Bulletin, issued by the National Association of Manufacturers, May 25, 1937, No. 20."

Q. And will you refer to the pages in that bulletin that have reference to the subject matter you have been discussing?

A. Beginning on page 6——

Q. Without your saying what is on it, just give us the pages, first, will you, please?

What pages contain——

A. Pages 6 through the middle of page 11, from the top of page 6 through the middle of page 11.

Q. And that deals with the general subject matter of what?

A. It deals with the subject matter of agreements that were entered into between unions and employers, and is entitled "Labor Union Agreements Analyzed and Summarized."

Mr. Kleeb: I wish to offer it in evidence as Board's exhibit 32.

Mr. Reed: The same objection, nd the additional one that it is not an official publication, wholly hearsay.

Trial Examiner Walsh: Overruled.

(Thereupon the document above referred to was marked as "Board's Exhibit No. 32" and received in evidence.)

By Mr. Kleeb:

Q. Will you please take Board's exhibit No. 32 again, Mr. Saposs, and, referring to the subject which you mentioned, please point out briefly the approach of the National Association of Manufacturers to this subject?

A. The National Association of Manufacturers felt that this information should be made available to its members, [fol. 688] presumably, and they made a study of these agreements and picked out a considerable number which they then analyzed on the basis of subject matter, as, for instance, the subject headings indicate: "50 agreements constitute our field of study".

Then they have, for instance, a sub-section on the question of union recognition, which, of course, is the essential factor, that it isn't possible to have collective bargaining, it isn't possible to enter into agreements, it isn't possible to negotiate, without first, of course, recognizing the union as the collective-bargaining agency.

Then they have ananalysis of the processes of collective

bargaining, and they had a definition of terms, and so on, indicating——

Then there is this question, like seniority, grievance-adjustment procedure, arbitration when differences arise, and so on, covering what would undoubtedly be subject matter that would go into the ordinary agreement entered into between an employer and a union.

Q. Mr. Saposs, it has been called to my attention that in identifying Board's exhibits 31-A to -G, inclusive, you did not identify or state what 31-B was.

A. Oh, yes.

Q. You went from -A to -G and excluded -B. Will you please just state that for the record?

A. Board's exhibit 31-B is entitled "Collective Agreements in the Corrugated Paper Industry" and is a reprint from the Monthly Labor Review, February, 1937.

Q. Have you found, in your experience, that documents setting up company-union labor-relations machinery ordinarily include the name of the company union?

A. Yes. In the documents, where drafted, or "plans", as they are called, constitutions of company unions, it was the general practice to mention the name of the organization by name as well as to mention, of course, the name of the firm by name, and it was also the practice to have those documents signed by the representatives of the company union as the supposed spokesman for the employees, and the representatives of the employer, giving the name of the firm. That practice has been discontinued since the new legislation, which, or course, bars employer interference in the attempt of employees to organize for collective bargaining.

Q. Well, do agreements between companies and these [fol. 689] so-called independent unions ordinarly include the name of the so-called independent union?

A. Yes. The agreements entered into between employers and these so-called independent unions that have come to our attention, and we have selected a very large number, invariably usually follow the usual form of an agreement mentioning the name of the labor organization, the name of the employer, and the agreements are signed by both parties. We have some of those copies of those agreements that illustrate the point.

For instance, I have here a printed agreement dated

September 1, 1934, between the Aircraft Independent Vertical Labor Union and the management of Curtiss Airplane & Motor Company, Incorporated, Buffalo, New York, the title, of course, even mentioning the parties to the agreement.

Now, in the agreement there is again a description of the parties to the agreement, and then the agreement is signed in this form: "Burdette S. Wright, president and general manager of Curtiss Airplane & Motor Company, Incorporated, for the management; P. N. Jansen, factory manager of Curtis Airplane & Motor Company, Incorporated, for the management; Charles Herbeck, president of the Aircraft, for the Aircraft". That is this so-called independent union.

"C. Howard Henderson, vice president of the Aircraft, for the Aircraft; J. Alderman, secretary and treasurer of the Aircraft, for the Aircraft".

We have also here sample copies of agreements that we obtained through correspondence between so-called independent unions and employers, which, again, illustrate the point that the agreements specifically stipulate names and are signed.

As, for instance, here is a sample copy of the agreement entered into between Hershey Chocolate Corporation, a corporation created by and existing under the laws of the State of Delaware, hereinafter called "employer", and Independent Chocolate Workers of Hershey, hereinafter called "union". Then the agreement is signed "Hershey Chocolate Company" and there is a line "president", "attest"; a line, "secretary", "Independent Chocolate Workers of Hershey", a line, "president", and "attest", a line, "secretary".

This is a sample copy and does not contain the signatures, [fol. 690] but it was sent to us by the Hershey Chocolate Company, with whom we corresponded.

We have here another agreement which we also obtained from a corporation in correspondence, and, therefore, it's a sample agreement. This is—the first paragraph describes the parties and, therefore, I wish to quote the whole paragraph:

This agreement, entered into between A and P Warehouse Employees Union, hereinafter called 'Union' and the Great Atlantic & Pacific Tea Company, hereinafter called

'Company', is for the purpose of establishing equitable conditions of employement for the employees and to promote cooperation and harmony between employees and company as represented by these contracting parties."

Now, this, too, is signed in that same way; "The Great Atlantic & Pacific Tea Company by" and this is typewritten; the original signature does not appear because it is a typewritten copy, "A. F. Gallagher, Charles J. Dockerty. The A and P Warehouse Employees Union by Alfred Adams, president. Attest: Joseph Smith, secretary."

Q. Mr. Saposs, do you find, in your experience, that these are peculiar instances, these independent union contracts, with companies, or is that a general practice?

A. Insofar as our studies have revealed, it is a general, widespread practice for employers to enter into signed, written agreements giving both parties names between themselves and the so-called independent unions.

Q. How do you explain that it has happened that trade unions, legitimate trade unions, have accepted these unilateral, as you call them, unilateral contracts, in labor terminology? Why have they accepted such unilateral contracts?

A. Unions have been traditionally opposed to unilateral contracts and have always insisted on signed contracts in which they are recognized as an equal party to the bargainer. However, situations have arisen where unions have found themselves in a disadvantageous position because they were weak or because of certain unfavorable economic conditions, and so on, and in such cases, unions found themselves with their backs against the wall and figured that they had no choice but for the time being to accept either a bulletin or a signed statement of policy on [fol. 691] the part of the employers which I have designated as unilateral agreements.

Q. In your opinion, is it better for the employer to have a strong union among its employees or a weak union, as a general principle?

A. It is undoubtedly better for the employer to have a strong union that is dependable, to whom that employer can deal with his employees, than to have a weak union which creates uncertainty and confusion and employers themselves who have had any experience in dealing with unions

testify to that fact. For instance, there have been a number of government hearings and government investigations of various sorts dating back to, for instance, an investigation of the Senate Committee of Labor and Education in 1866 and an industrial commission created in 1898, an industrial relations commission created by the United States Department of Labor in 1912 and other agencies that have studied, that have taken testimony under oath and that have investigated, and employers who have had any experience in dealing with unions, who have testified, have definitely indicated that they find it to their advantage that a union should be a substantial organization, that a union should have strength, that a union should be in a position to function effectively in the protecting and promoting of the interests of its members and labor economists who have studied these subjects have also expressed that same opinion in their writings and I could quote a long list of them.

Q. You previously testified about the form of an agreement and about the substance of an agreement stating that, ordinarily, the quarrel is about the substance. You say that some employers have a quarrel about form. What have you found to be the type of the employer that is quarreling with the union about the form that the agreement should take or not take?

Mr. Reed: The same objection to this and also an additional one of calling a witness to characterize the type of employer; most ridiculous type of testimony I have ever heard offered. I want you to seriously consider the objection.

Trial Examiner Walsh: Objection sustained.

Q. Mr. Saposs, are agreements signed by a union specifically named and an employer specifically named a new procedure in this country?

[fol. 692] A. No, this practice of signing agreements and mentioning names of unions and employers is a practice that dates back almost to the very beginning of the country. In other words, it is a practice that dates back to the time when our country began to be industrialized so that we find such documents before 1820 and following that time up to the Civil War there was an increasing number of these written, signed trade agreements. Beginning, of course, with the—prior to the Civil War there was this in-

creasing number and beginning with the Civil War and following the Civil War, of course, where our country received this tremendous industrial impetus which usually accompanied war, we find a widespread development of this use of written, signed agreements between employers and unions and by about 1890 or between 1880 and 1890, just about the time when the dominant note of production in the United States became the factory system as against the handicraft, this practice had already become so widespread that it was being taken for granted and was, as a matter of fact, heralded as an evidence of the introduction of industrial democracy and constitutionality in industry in the sense that the employees now had an equal voice with the employer in the determination of the conditions of employment which then were imposed in this written trade agreement and as a result of this development, as I have already indicated, studies have been made, literature has been issued describing this practice, analyzing the agreements, and so forth?

Q. Would you trace, briefly, the general history of signed agreements in this country and elsewhere?

A. This history, then, of signed agreements in this country, you see, has had development practically from the beginning of the country and running up through the present time so that where employers deal with employees in unions they just take it for granted that they enter into these trade agreements. Now, this isn't the practice that is unique to the United States. It is a practice which is followed in all important industrial countries. I have here, for instance, a document issued by the "Ministry of Labor" entitled "Report on Collective Agreements between Employers and Work People in Great Britain and Northern Ireland", Volume I, issued, printed, and published by "His Majesty's Stationery Office, London, 1934," and here, again, we have sample agreement collected by this agency of the British Government and reproduced in this document indi- [fol. 693] cating the practice of entering into written, signed agreements between employers and unions and I want to read, in a few instances, the descriptive paragraphs so as to indicate how these parties are referred to in these agreements. On page 75, appendix A, entitled "Specimen District Agreement". The description is as follows: "Agreement of November 30, 1926 (as amended on December 23,

1937) between the Durham Coal Owners Association and the Durham County Mining Federation." The one, as you observe, is an association of employers acting as a bargaining agent for those employers; the other one is a union of miners acting as the bargaining agent for the miners. On page 180, of this document, there is reference to another agreement and I read:

"This agreement was signed by the Iron and Steel Trades Employers Association. The Cleveland Iron Masters Association; the West Coast Iron Masters Association; the Lincolnshire Iron Masters Association; and the Amalgamated Union of Building Trades Workers and was endorsed by the Iron and Steel Trades Confederation." Which is a confederation of a large number of unions. Again a case where the organizations negotiating and being party to the agreement are mentioned by name. On page 435, section entitled "The London Agreement" description of the parties as follows:

"These rules are drawn up on behalf of and shall be binding on (a) members of the London Furniture Trades Federation representing the employers of the one part and (b) members of the various trade unions constituting the London Furnishing Trades Federated Committee." And then the list of the unions are included in parenthesis and I won't take the time to read them. On page 445, the section entitled: "England and Wales" there is the following description:

"The United Kingdom Joint Wage Board of Employers for the vehicle building industry was formed in 1919. It now consists of representatives from the National Employers Association of vehicle builders and the National Federation of Vehicle Trades, the latter federation having become members in 1922. The Scottish National Vehicle Builders Association and the Welsh National Monmouthshire Association of Vehicle Builders were members of the Board at its inception. These associations withdrew. The [fol. 694] latest agreement entered into by the Joint Wage Board is dated April 28th, 1931. The unions party to the agreement being the National Union of Vehicle Builders and the Amalgamated Society of Wood Cutting Machinists." Again, an instance where in this case employers associations acting as the bargaining agents for the employers of

their respective trades and industries are mentioned and the union acting as the bargaining agent for the members, as I mentioned. As I have said, this practice has been in all, —applied in all important industrial countries, and I have here a document issued by the "International Labour Office" which is a League of Nations agency situated in Geneva and of which the United States is a member, represented on the governing board and contributing on a pro rata basis to the financial support of this organization. This International Labour Office issued a document entitled "Collective Agreements, Geneva, 1936" and contained a description and an analysis of agreements entered into between employers and unions in a large number of trades and industries in the important industrial countries of the world.

Q. You, in your testimony, mentioned employers' associations. Will you describe, please, the role of employers' associations in labor relation in this country, in the United States, particularly?

A. It has been the custom and practice of employers dating back before 1920 to organize themselves into employers' associations. The purpose of those employers' associations is to guide and advise the employers in the determination of labor policies so that there are such employers' associations at the present time existing and functioning in the United States. Outstanding of these, as I have already mentioned, is the National Association of Manufacturers, which counts among its members the outstanding employers associations that are anti-union in their attitude; the employers associations are organized in many cases locally; every important industrial city will have an employers association. The bulk of the employers of that city will belong to that association so that they have an articulate expression, they do not act as individual employers, they act through this employers' association. Then employers' associations are organized nationally. They may be organized nationally by trades or industries. For instance, an association that has attracted a great deal of attention is [fol. 695] the National Metal and Trade Association. Another one is the National Erectors Association, the National Founders and, so on, organized on an industrial or on a trade basis to be the expression, the articulate expression, of the employer with reference to labor matters and usually the labor policies that employers enunciate, that employers

adopt, are the ones that have been worked out by these employers associations and when employers have difficulties, labor difficulties of any kind, they turn to these associations for aid, for guidance, for support.

Q. Have you with you any authority on that subject, or can you refer to any?

A. I have a large number of authorities on the subject, but I ought to distinguish between the different types of employers' associations and the history of industrial labor relations in the United States. The students of this subject, that is, labor economists and others, in their writings, have differentiated between two types of employers associations; one type they call negotiatory employers association, meaning the employers associations that recognize and deal with unions; that is, the employers' associations that meet and negotiate and there are such associations functioning either on a local or national basis. For instance, in the Flint Glass Industry, there is an association of that type, an employers association; in the glass bottle blowing industry there is an employers asosciation of that type which deals with the unions; in the printing industry there is an employers association. Those are called negotiatory employers associations because they work on the principle that they will deal with unions and that they will negotiate with them, enter into written, signed agreements, include the name of the union as well as the employer, and so on.

There is another type of employers association which is called the belligerent type of employers association, and that type is the anti-union type. That is the type which states either specifically or indirectly that it is opposed to its employees organizing themselves into unions. In other words, it is anti-union; which is opposed to dealing with unions and which has resorted to a variety of methods, some of which I intend to describe, in preventing employees from organizing themselves into unions or in breaking unions when employees have organized themselves. That is the belligerent employers associations, headed by the National [fol. 696] Association of Manufacturers, by a number of others I have mentioned. Their literature indicates it, their expressions, their activities, on which there is a great deal of evidence, is indicative of the purpose and function of these employers' organizations. I want to describe, briefly, some of those activities. For instance, in pre-War days, when there was——

Mr. Reed: In addition to the objection I made to this testimony generally, this is a new field. He is starting to describe the activities of anti-union employers associations. It's even further removed from this case than much of the testimony that has been admitted, and I renew the objection and point out that, in addition.

Trial Examiner Walsh: What is the purpose of this general line, this particular line? How do you intend to proceed?

Mr. Kleeb: Just a very brief statement on the activities of these so-called belligerent employers associations and I think it is material to show the general history and background——

Trial Examiner Walsh: The objection is overruled, although I wish to call your attention to the special force that's raised in the objection to this particular instance.

By Mr. Kleeb:

Q. Mr. Saposs, will you just briefly give us the statement about the belligerent employers' association?

A. These belligerent employers' associations are the ones that organize and direct anti-union sentiment and anti-union activities on the part of employers throughout the United States. There have been various periods in the histories of these associations when they were more active and more belligerent than at other periods and those coincide quite clearly with the period when there has been a great deal of labor activity, when the workers begin to organize themselves into unions.

When those unions begin to get active is the time when these belligerent employers' associations also begin to spread this anti-union sentiment and begin to guide the employers in their activities in fighting union organizations. Of course, during the other times they still continue to function, but not quite as actively, and there have been a number of periods in the history—one of these outstanding periods was in the immediate pre-war period—in the im- [fol. 697] mediate post-war period—when we had this widespread so-called open-shop campaign headed up by employers and which, of course, was an anti-union campaign in which millions of dollars were spent by employers' associations to fight union organization, to break up union organization, and, in many cases, they were highly successful.

I have here a document written by a student of the sub-

ject which describes that particular campaign in this immediate post-war period. The book is entitled "The Open Shop Drive" and is published by Savel Simond of the Bureau of Industrial Research, New York, and was issued in 1921, just about the time when this open-shop movement or anti-union movement was at its height.

I also have a number of others books which describe the activities of these belligerent employers' associations, one of them being a book entitled "Labor Problems in American Industry," written by Carroll R. Dougherty, professor of economics, University of Pittsburgh, and published in 1936 by the Houghton-Mifflin Company, and I want to call particular attention to chapter XXIII, beginning with page 676, entitled "Empoyers' Association," in which there is a description of activities of employers' associations. I also want to call attention to a book confining itself entirely to this one subject entitled "Employers' Associations in the United States," and written by Professor Clarence E. Bonnett, professor of economics, Tulane University, Louisiana. In this book he makes an exhaustive study of employers' associations. This book appeared in 1922, published by McMillan, by Professor Bonnett, but Professor Bonnett has brought the subject matter up to date in an article he published in the Encyclopedia of the Social Sciences, volume V, beginning with page 512, also entitled "Employers' Association," and appearing in 1935.

I have another book which is entitled "History of Labor in the United States 1896-1932," volume IV, "Labor Movement," written by Professor Selig Pearlman, professor of economics, University of Wisconsin, and by Dr. Philip Taft.

This book, since it treats also of the subjects historically, treat of the activities of employers as I have described them, in a number of chapters, and so I want to call at-
[fol. 698] tention to those chapters: "Chapter XIII, pages 129, is entitled "The Employers' Master Offensive." Chapter XXVIII, beginning with page 343, is entitled "Beginnings of Company Unionism."

Chapter XXXVII, beginning with page 489, is entitled "The American Plan," which describes the activities of the employers in fighting unions, and the plan that they devised at that time is called "The American Plan."

Now, these employers in their activities, have also been the ones who have stimulated and encouraged company

unions. It wasn't individual employers who propagated and sponsored the idea of company unionism. It certainly was not employees who propagated and sponsored the idea of company unionism. But it was these employers associations.

In other words, if we were to describe the company-union movement as a movement at all we would have to describe it not as a workers' movement but as an employers' movement, because all the literature that was issued, all the defenses, all the advocacy of company unionism is definitely traced to employers and to employers' associations, and so these outstanding employers' associations were the ones, for instance, who published the literature sponsoring, featuring, preparing company unions. They are the ones who published the model plans and constitutions which were copied by employers and handed down to the employees.

In other words, all of this, you see, is a highly organized nation-wide movement on the part of employers, and I have a description of that in Bulletin No. 1, showing the nation-wide nature.

Q. What exhibit is that?

A. This is Board's exhibit 24 and, beginning with page 51, there is a section entitled "Employer and Labor Policies Nationally Determined," and in there is a description of testimony given under oath in the Jones & Laughlin case, the case that came up before our Board and finally went to the Supreme Court of the United States, describing the nation-wide activities of employers' associations.

The bulk of the testimony on which it is based was given by a gentleman named Glenn A. Bauers, who, at one time, was the director of Industrial Research Bureau, an organ- [fol. 699] ization financed by John D. Rockefeller, Jr., and his associates, a man who has had extensive experience, who has studied the subject throughout the United States, and, in this bulletin, he describes the nation-wide activities of employers' associations in the determination of labor policy.

Now, these employers' associations have also been the ones who have sponsored and encouraged the most recent anti-union campaigns, such as the back-to-work movement you have heard a great deal of.

Most people have been under the impression that the back-to-work movement was a spontaneous assertiveness on

the part of workers who wanted to go back to work. As a matter of fact, study has revealed that the back-to-work movement was inspired either by employers or those associated with them, but inspired secretly and privately to give the impression that they were organized spontaneously.

Then there were various other means. Employers, particularly in some industrial towns, have taken upon themselves to terrorize the businessmen, to terrorize the public authorities, the police, the mayor; to terrorize the professional man, and others, in order to break strikes.

In order to interfere with the right of the workers to organize, one gentleman devised a technic which has since been named the Mohawk Valley Formula, and that gentleman is Mr. James Rand, the president of the Remington-Rand Company, which company was involved in some serious labor difficulties in a number of cities where the plants of that company were located.

He devised—that is, he just put all these practices, you might say, on a scientific basis, and, when a case was brought before the National Labor Relations Board, testimony was taken in all these important industrial towns, under oath, with the right to cross examine; and then our Board rendered a decision. I have a copy of the decision here. It is publicly available, of course. I want to read the title of the decision into the record: "United States of America. Before the National Labor Relations Board. In the Matter of: Remington-Rand, Incorporated, and Remington-Rend Joint Protective Board of the District Council, Office Equipment Workers."

In this decision rendered by the National Labor Relations Board is an analysis of all these anti-union methods that are used by employers.

Now, the National Association of Manufacturers was [fol. 700] so much interested in this particular technic that it published an article in its labor-relations bulletin for July 20, 1936, No. 14, entitled "A Community Organizes," and in there it describes the technics used, which have now come to be described as the Mohawk Valley Formula, thereby making it available to its members, employers in general.

Q. I will conclude in just two questions. Mr. Saposs, suppose if a labor organization representing a majority of

employees in an appropriate unit has conferences with an employer with regards to wages, hours, and working conditions, and they meet from time to time and are looking forward to a signed agreement, and suppose, further, that the employer states, in substance, "While I am always glad to meet with you and bargain collectively with you, I will not enter into a signed agreement; that is out of the question; it's against the policy of the company": in the light of the history of collective bargaining, as you know it, would you consider that that employer was bargaining in good faith?

A. No, he was not.

Q. Suppose that a labor organization representing a majority of the employees of a company in the appropriate unit is meeting with the representatives of the company for the purposes of collective bargaining with regards to wages, hours, and working conditions, looking toward a signed agreement, and suppose that the company has decided that the company will issue a labor-relations bulletin similar to the one in evidence and which has been shown to you in this case; in the light of the entire history of collective bargaining, as you know it, would you consider that that employer was bargaining in good faith?

A. No, he was not.

Mr. Kleeb: Cross-examine.

Mr. Reed: No cross-examination.

Trial Examiner Walsh: We will adjourn until 1:30.

(Whereupon a recess was taken until 1:30 o'clock p. m.)

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 o'clock p. m.)

Trial Examiner Walsh: The hearings will proceed.

[fol. 701] Mr. Kleeb: I should like to make a statement for the record, that the Board rests its case.

HOWARD HEINRICH, a witness called by and on behalf of the Resopndent, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bostwick:

Q. Your name, Mr. Heinrich, please?
A. Howard Heinrich.
Q. Where are you employed?
A. H. J. Heinz Company, Pittsbugh.
Q. In what capacity, sir?
A. Superintendent of the factory, Pittsburgh Plant.
Q. How long have you been active in that capacity?
A. About 23 years.
Q. You were present when Mr. Novak and other witnesses for the complainant testified in this case, I believe?
A. Yes, sir.
Q. Mr. Novak testified that on or about the 19th of April, at a meeting in which you and Miss Weisman, Mr. F. C. Heinz, and Mr. Koehrer were present; that you offered him a new job as a millwright in the machine shop or a foreman's job in the cooperage department, and that that offer was, in his opinion, made in an effort to buy him out or to cause him to cease his union activities.

Will you please state the fact, first, as to the conference, and the conversation? Who were present?

A. I did offer Mr. Novak a job just as a preliminary to the conversation at his request.

On the morning of April 19th or during the forenoon of that day, Miss Weisman, our employment manager, and also supervisor of girls, came to me and reported that Mr. Novak, Frank Novak, had been threatening and frightening the girls in the mixed pickle department. She felt they were pretty much upset, that I should do something about it. I told her that I would—at the time I was very fidgety, and I said, "Just as soon as I find time, I will call Mr. Novak up and in your presence and in his foreman's presence, I [fol. 702] would like to talk the thing over."

Well, sometime after lunch, possibly 1:30, I had gotten back to the office, and I sent Mr. Hayes out for Mr. Novak. I didn't know just at that time where he was working. He had worked in the cooperage shop; he had worked around different parts of the factory, and in the surplus depart-

ment. And in the meantime, I sent for Miss Weisman and Mr. Koehrer.

Q. Who is Mr. Koehrer?

A. Mr. Koehrer is in charge of the pickle department and also *also the* cooperage department. He has entire charge of the cooperage and the mixed pickle department where Mr. Novak worked.

Q. Is he foreman there?

A. He is the foreman. Mr. Koehrer—I don't just remember who arrived first, if Mr. Koehrer or Miss Weisman did. But Fred Heinz was in conference with me shortly after lunch, up until the time they arrived, and he was in the office. And when they came in—as I said, I don't just recollect who was there first—but Mr. Novak eventually arrived with Mr. Hayes, and Mr. Hayes brought him to the door and left. Mr. Heinz remained there. I don't know if it was—if I had asked him to stay or if he just simply stayed.

And the conversation started in this way. I greeted Frank, or Mr. Novak, and asked him what he was doing, where he was working, and talked in just a general way for a very few seconds, I would say, when Mr. Novak threw up his arms and he said, "Let's get down to the point. Let's talk about the union."

I said, "Well, if that is what you want to talk about." I said. "I have got something to talk about first." I said, "What right, Frank, have you got to threaten and frighten the girls in the mixed pickle department?" He said, "I no frighten the girls." I said, "Well, that is the report that Miss Weisman gives me," and I said, "In addition to that, I have heard rumors to that effect, and it has been verified this morning by Miss Weisman." "Now," I said, "I don't know why you should feel that way, that you could go around frightening people to join the union. I just wonder what is wrong with you. Are you satisfied around here or are you dissatisfied, and why?"

I said, "You started here in 1923 as a boy. You worked here until sometime in '29, when you decided to be a prize fighter, an amateur boxer, and you left the employ of the [fol. 703] company at that time." I said sometime in 1933 Mr. Koehrer," who was sitting alongside of him "made the request to me that we give you employment, that you were out of a job. You evidently hadn't made good as a boxer or prize fighter, at least to the extent that you could

earn your livelihood that way, and made the request that we give you employment.

I said, "I told Mr. Koehrer I would be willing if he wanted you back in his department to put you on." So a short time later he was put on. Well, I went through that explained that to Mr. Novak, and he agreed with all that, and he said it is very nice that we did that, and, he thanked me and thanked Mr. Koehrer for what we had done for him.

"Now," I said, "if we did that for you, and you were satisfied to come back and work for us after being away from us for about three and a half or four years, why this unrest? Why the dissatisfaction? Just what is wrong?

And he said, "Well, I will tell you." He said, I was with the company 13 years." And I corrected him on that statement, because he meant up until 1937 he had been there 13 years, and I corrected him on that statement, because he started in '23 and left in '29, and returned sometime in '34. At that time it was April, 1937. And I said, "Well, just why are you dissatisfied? You say 13 years, which is not correct. You just tell me why you are not satisfied."

He said, "Well," he said, "I am a big fellow. I can do hard work, and I would like to have something that I would work up to, that in time will pay me more money." And he said, "I have been around here a long time, and I think I should have that opportunity."

I said, "Frank, have you asked Mr. Koehrer to get any different job where you could earn more money or where you could advance yourself so it would be possible for you to earn more money?" He said, "No." I said, "Did you ever ask me?" He said, "No." "Well," I said, "I don't know that you have anyone to blame except yourself, if that is exactly what has happened."

"Now," I said, "if you feel that you haven't been treated right, I am willing, if you mean business and really want to get a job, train yourself so that it will enable you to make [fol. 704] more money, I will do what I can to get you another job." I said, "Do you have anything in mind that you would like to do?" He said, "No, except something in the line of a trade." I said, "Well, we have the boiler room work, we have steam shop work, pipe work, millwright work." And I had no more gotten the word out of my mouth, and Mr. Novak said, "That is what I would

like to have." He said, "I do that kind of work at home." He said, "I have had some training." He says, "I have tools at home," and he says, "I have some machinery at home, saws and such things, and I do woodworking," and he says, "that is the kind of work I like."

I said, "Well, if Mr. Simpson," who is the head of the millwright department, "has an opening, I am willing to send you down there." I immediately called Mr. Simpson on the phone in the presence of those in the room. I said, "Mr. Simpson, do you have any openings for millwrights?" He said, "Yes; we have got quite a bit of work right now, and I could use another man or two." And I said, "Well, I have a man that wants to learn the millwright trade, and if he means business and wants to do the right thing down there, is really in earnest in learning this trade," I said, "I am willing to give him the opportunity." I said, "Tomorrow morning, if you will be up here, I would like to talk it over with Frank, Mr. Novak, and you, and have some understanding of just what he will do down there and what help you will give him in order for him to learn this work."

Well, the meeting lasted quite a while. During that time the discussion was not between Mr. Novak and myself to any great ex-ent. After we had come to that understanding, Mr. Fred Heinz, who evidently was a boxing fan, had quite a discussion joshing back and forth with Mr. Novak as to his career as a prize fighter. The conversation lasted and lasted. Mr. Koehrer and Mr. Novak had quite a conversation about his work in the cooperage department, the pickle department, the times they had had. Frank remarked that Mr. Koehrer sometimes was a pretty hard boss, but he thought he was a pretty fine fellow after all. Then he slapped him on the knee and said, "Mr. Koehrer, you are all right." Well, that was the conversation most of the afternoon.

Q. Just before we leave that question, did I understand you to say that Mr. Hayes was not there?

[fol. 705] A. Mr. Hayes was not there. I told Mr. Hayes to bring Frank to the office. Mr. Hayes came up to the office, as far as the door and left. Just Miss Weisman, Mr. Koehrer, and Mr. Fred Heinz were present during all of the conversation that I had with Mr. Novak.

Q. Now, who is Mr. Hayes?

A. Mr. Hayes is a general foreman that is connected with the superintendent's office on detail work. I have two other men that do similar work or in similar capacity. They are connected with the Superintendent's office but work throughout the entire plant.

Q. Now, you say—at least, it seems to me that I remember that Novak testified that F. C. Heinz, Fred Heinz, is a nephew of Howard Heinz; is that right?

A. I believe that Mr. Novak did testify to that, to the best of my knowledge. Mr. Fred Heinz is about a third or fourth cousin, or possibly farther back into the relationship than that. My recollection is that Mr. Fred Heinz' grandfather was a cousin of Mr. H. J. Heinz, the original founder of the Heinz institution. I can't figure that out, just what that would be, but I would say it would be at least a third or fourth or fifth cousin, if there is such a thing.

Q. Now, I think Mr. Novak testified that when he was definitely given this millwright job, and at a subsequent conversation on the same day with you, and a man by the name of Arthur Ramick, that you made some—you had an argument with Mr. Novak about an alleged statement of his that you had given him this millwright job in an attempt to buy him out.

Will you state the conversation as nearly as you can recollect it?

A. Well, the next morning I told Mr. Hayes to have Frank—Mr. Novak—come up to the office, that I had said—had intended to have Mr. Simpson up there just to discuss the job he was going to. And about quarter to 8:00 Frank arrived at the office, after Mr. Hayes had seen him somewhere in the plant, or, as I remember, in the time office. And Mr. Simpson and Frank arrived at about the same time. They walked up to my desk; they did not sit down. I simply told Mr. Simpson that Mr. Novak was there, and the conversation, of course, that was held in the afternoon before, what I wanted him to do. I repeated to him the same as I did to Frank, if Frank really meant business and [fol. 706] wanted to do the right thing down in the cooper shop—or, in the millwright department, in wanting to learn the millwright work, that I was sure that he would do what he could to help. I mentioned Mr. Muska, who was an old millwright and had been in the department or the employ

of the company for 28 years. I was sure that he would do what he could to help him learn this work, but it depended entirely on the effort that he put forth just how far he would succeed.

Well, now, Mr. Novak and Simpson were there possibly five minutes, not any more than that, and they left, went down to the shop. That was, I would say, about 8 o'clock. About 10 o'clock Mr. Simpson called me, and he said that "Some of my men have reported to me that you tried to buy out Frank. You tried to bribe him so that he would quit his union activities." Well, it didn't take me long to get from the factory office down to the millwright department. I didn't waste any time because I was rather burned up about such a statement. And I went down and got Mr. Simpson on the first floor of the building, went up to the second floor, where Mr. Novak was to work. In fact, that is where he was working, the second floor of the building. On one end is the millwright department and on the other end is the electrical and part of the experimental shop. Mr. Ramming, Art Ramming, who was one of the men who heard that report, was working just a short distance from the head of the stairway, and as I went up with Mr. Simpson, I called Mr. Ramming over and at the same time mentioned for Mr. Novak to come out. When they got here I said, "Now, Frank," I said, "I have heard a report this morning that has got me pretty much upset."

I said, "Mr. Ramming, here, is one of, I guess, the many that has heard I tried to buy you out; tried to bribe you in order to have you quit your union activities." I said, "Now, I want you to listen to what I have got to say. I am supposed to have offered you this millwright job at 85 cents and hour and I want you to tell these men just what you are getting." There was a crate of machinery just in front of us, and I wrote on there "62½ cents." I said, "Frank, is that your rate?"

He said, "Yes." Of course, Mr. Simpson and Mr. Ramming were there with me.

"Now," I said, "when you were in the cooperage department you were receiving 57½ cents an hour, up until [fol. 707] this last pay, and this last pay you were raised to 62½ cents an hour, an increase of five cents an hour, just the same as the rest of the coopers received an increase of five cents an hour," I said, "is that right?"

He said, "Yes."

I said, "Not only the cooperage department but practically the entire plant of male employees have received this same increase of five cents an hour." The increase had gone into effect three days prior to the time I talked to him, but all the men had been told about a week ago that, prior to the 16th of April, that they had received this raise, by Mr. Koehrer, who had charge of that department.

I said, "Does that look as though I have been trying to buy you out?" I said, "You are getting 62½ cents an hour, five cents increase, but the increase is just the same as the rest of the men in your own job got." Not that they all got the same hourly rate, but they all got the same increase, according to what rate they had prior to that.

I said, "Does that sound as though I am trying to buy you out, Frank?"

And he said, "No, I never said that. I never made such a statement you tried to buy me out."

I said, "Do you really think I tried to buy you out?"

And he said, "No."

"Then, Frank," I said, "if that's your honest opinion, that is the last you will hear from me, but," I said, "I don't want to hear of those remarks again."

And Mr. Simpson and I talked to Frank a little bit more, then, and Mr. Ramming went back to his office and we walked back, if I remember correctly, back to where Mr. Muska was working, part-way back, and we talked in a general way about the work, and Mr. Simpson told him what he would do if he really wanted to learn the millwright work; he would show him how to do the work.

Q. I think that Mr. Novak testified also that in this earlier conversation in the afternoon of the 19th that you offered him a job as foreman in some department; is that correct?

A. Well, I heard that testimony, but I never offered Mr. Novak a job as a foreman or a boss of any kind, as he said. In the first place, Mr. Novak would not have been qualified to fill such a position.

Q. Now, to go back to the raise in the cooperage depart- [fol. 708] ment applicable to Frank. What was Frank Novak's rate in the cooperage department just before the final raise prior to this conversation you mentioned?

A. 57½ cents an hour.

Q. And what was the rate to which he was being—at

which he was being paid at the time you had the conversation on April 19th?

A. 62½ cents; it had dated back prior to that; in effect prior to that, three days, but he had been told, about a week or 10 days before that, he had received an increase in the cooper's shop just the same as the rest of the men; five cents an hour.

Q. Do you have that employment record here with you?

A. I have the rate cards used by our payroll department. It's the official record, only record of an hourly employee's rate.

Those records are retained by the payroll department and my alterations, any increases, on those cards are made by myself, initialed by myself, and the date and the rate set in on this card. I have those right here. Would you like to see them?

Q. We will not encumber the record with them unless Mr. Kleeb happens to want them.

When was this increase in rate, hourly rate, put in to everybody in the cooperage department?

A. April 16th. That is the payroll period. The employees are paid on the 3d and 18th of the month. The pay ends on the last of the month and the 15th of the month, and this new rate was effective April 16, 1937.

Q. And that pay increase was effective to Frank Novak and everybody else similarly employed in the cooperage department on that day?

A. That's right.

Mr. Kleeb: May I look at the records?

Mr. Bostwick: Surely.

The Witness: These show the different months (handing to counsel).

By Mr. Bostwick:

Q. Now, Mr. Heinrich, when Bennie Zecca testified I think he stated that he had a conversation with you near a gate about the work he was doing, and he told you he was doing that work there that day because he had been sent there by Mr. Russell, and that you asked Mr. Zecca, "Do you know [fol. 709] that if it was unionized here what pay you would be getting?"

And that you told Zecca that "Under the present system a man transferred to another job calling for a lower rate of

pay would continue to receive the rate appropriate to his regular job but that would not be true if the unions came into the plant."

Will you state the fact?

A. I was down around the machine-shop building, and I saw Mr. Zecca, Bennie Zecca, at this gate. I thought it was unusual that he should be there, because, ordinarily, we have an older man there; and I walked over to him.

"Bennie, are you working down here?"

He said, "Yes." He said, "Down here at this gate." He said, "there is a surplus of help and I was in the surplus of help and Mr. Russell needed a man at this gate, and" he said, "I was sent down here," and I said, "Well, that seems funny, Bennie." I said, "You understand, if you are down here as a watchman you will not receive the rate you are receiving as a craneman," because, at the particular time, I know, his rate was rather high for this particular man, because he was small and not capable of doing any hard physical labor, but he was qualified to act as a craneman, and he had been a good craneman, and his rate was in proportion. He was receiving a very good rate as a craneman, and, being a real small fellow, why, of course, we are not very anxious to use him around the plant on a lot of jobs, because he wasn't physically able to do some of them.

I said, "You understand if you are down here as a gateman you will not receive the rate, as a permanent man down here, as you have as a craneman." I said, "Just temporary, if you are only down here for a day, of course, your rate goes with you, whatever job you held before, but, if you are transferred on this job, you will have to accept a lower rate, and you will not receive a craneman's rate."

As far as saying anything to Mr. Zecca, anything about the union, I deny saying anything to him in that respect. In the conversation I had with any employee during that period, in the majority of cases, and I would say in practically all—I can recollect, for instance, you talked to any employee, questioned him about anything, no matter how minor the matter was, it was brought up, the employee [fol. 710] naturally would bring up the subject of union.

If you criticized someone or corrected them about something, the first thought that would come to their mind, "Well, it's because there is union activity around here, and maybe he thinks I belong to the union." And that was the attitude of most of the employees at that time.

I did not tell him anything about the union. What I had in mind was simply this, that as a craneman—I have forgotten what his rate was, now, but I would say probably 70 cents an hour—that he would not receive that as a watchman if that was to be his permanent job or his job for any extended length of time, and that was the extent of the conversation I had with Mr. Zecca.

Q Mr. Zecca, at another point, testified that at a conversation with you at which Mr. Ruddick was present, the conversation was about unions, and the effect on Zecca if an outside union were operating within the plant.

Mr. Zecca stated that you said, "Your job is running a crane. If there is an outside union here, your job is a crane-operating job, and we have no job for you. You go home." And that, even though other work were available, it would not be offered to a man classified under a particular job and rate.

Did you have any such conversation with Mr. Zecca?

A. One afternoon in Mr. Ruddick's presence I was going through from the spaghetti building to the bean building and I saw Mr. Zecca working, bringing something out of the cars. In other words, he was unloading some material from out of the cars, and I said to him, "Who are you working for, Bennie?"

And he said, "For Bill Young, Mr. Young."

I said, "How long have you been working for him?"

And, as I recollect, he said just that particular day.

Now, as far as Mr. Zecca's particular statement that I had questioned him about the union. I can only say the conversation was the same as it was with him before. If there was anything mentioned about union, I didn't mention it.

Mr. Ruddick had some conversation with him about his wife and family.

He said, "How are the wife and children, Bennie?"

And I thought it was peculiar, at the time, and I said [fol. 711] to Ruddick, "Are you acquainted with Mr. Zecca's family?"

He said, "Sure, I was up to his house one time." I think it was during the flood. he had gone after Bennie to come in to work, and they had a little conversation about the family, and I went on. As I recollect, Mr. Ruddick followed me.

Q. Did you hear anything said about unions in the conversation?

A. I don't recollect that I heard anything said about unions.

Q. Now, when Sophie Kos was testifying, I think under cross examination, she stated that she asked you, Mr. Heinrich, what this—referring to the Heinz Employees Association—what this association is all about, and that you answered, "If I tell you it is good they will say because I am superintendent that I should not say it is good."

And that this conversation with you took place before she attended any A. F. of L. union meeting.

What is your recollection about that matter?

A. About 1:30 that particular day she refers to I was going through the spaghetti and meat-soup-filling department. That's my usual route after lunch, and, as I passed where Sophie was working, she was working with two other girls; they were packing cans in baskets, and Sophie stopped me. I said "Hello."

She stopped, she said something, motioned to me, and I went back.

She said, "what is all this talk I hear about strikes and unions?"

And I said, "I don't know, Sophie." I said, "Are you hearing such reports?"

And she said, "Yes, I am."

I said, "Well, where do you hear those things?"

She said, "Oh, up here among all the help." She said, "Everybody is talking."

I said, "Well, Sophie, I don't know much about it." I said, "If you have heard that, why, you probably heard that."

Then she said, "Well, what about this employees' association?"

I said, "Sophie, I can't tell you about anything. As superintendent of this plant, if I would say anything either way, one way or the other, about anything, you would say [fol. 712] I was trying to favor some organization." I said, "As far as I am concerned, it's nothing to me. That's your own affair, as far as getting advice about that, and I can't tell you anything"; and went on.

Q. Now, when Steve Kuss, of the cooperage department, was on the stand he testified that some time in May, I think he said the 11th or 12th, he had a conversation with you, part of which a man by the name of Joe was also present.

Kuss testified that in that conversation you said to him, "I heard you were at the meeting last night."

And you said, "Steve, we don't want you to go in the outside meeting. You stay here where you are and I give you a better job and more money."

Was any such conversation had?

A. Very little of such a conversation was held between Mr. Kuss and I. Mr. Kuss had been reported as not doing his work properly, although he had been in the cooperage department he was running an elevator. Some time prior to that, several years before, his foreman recommended we give him another job, because he was not physically strong enough to do the cooperage work.

We tried everywhere to find him a job. He is a small man and he is not a young man, and we tried to find some work which would be suitable for him. We put him on a small elevator, and the nature of the work does not require a strong man, and we had him on this elevator. I had received reports from different foremen around the factory that Steve was leaving his elevator, and was not hauling the goods for them, bringing the trucks up as they needed them, so I did a little checking-up myself.

One morning as I was going through there I noticed a whole lot of trucks on the fifth floor accumulated, that they had not been moved. I knew there couldn't have been as many accumulated there all at one time, so I went down to the next floor, where I found Steve. Steve was off the elevator. I will not say Steve was not off the elevator to get a truck, but regardless of that, he was around the side of the elevator, and this man he referred to, Joe Donas, was there, and what the conversation was I don't know, but I approached Steve and I said to Steve, "I can't understand, Steve, why you can't stay on your elevator and why you can't [fol. 713] keep these trucks moving from floor to floor."

I said, "Just what's the matter? Is it too much for you, or aren't you trying to do it?"

And Steve is rather excitable, and he flew up, and he said, "No, you are only picking on me because I go to the meeting."

I said, "What meeting?"

He said, "Oh, union meeting." I said to Steve, "I don't know of any union meetings, and I am not interested in union meetings."

He said—I said, "What I am interested in is you doing

your job." I said, "You have been around here a long time and we have made a job for you, and this is a nice job for you. It's one of the easiest elevators we have got around here." And I said "Your job is on that elevator."

And Steve went on to say, continued I was picking on him because he was going to the union meetings, or belonged to the union.

I again assured him he could join all the unions he cared to and he could go to all the meetings he wanted to, I was only interested in having him do his work.

Steve referred to one conversation, and I had a conversation with him after that, again in regard to his work, and then he argued with me, accused me of wanting to talk to him about union and going to meetings.

I said, "I am not here to talk to you about unions or meetings. I am here to talk to you about your job and about doing your work." That's the extent of the conversations I had with Steve.

Q. In either of these conversations did you tell him, so far as you were concerned, a man could belong to any union he wanted to?

A. That's what I told him.

Q. I believe you heard the testimony of Edith Sherbon.

A. Yes, sir.

Q. I think she testified you—I think she testified to a conversation which she said occurred about the 13th of July, last, somewhat after four o'clock in the afternoon. Her testimony was that you sent for her and that she met you at the desk in your department and that you said, "Edith, you have turned in a complaint. Why did you not come to your forelady or foreman with it?"

She testified that she said she had been told by the union [fol. 714] that any complaint should be filed with the grievance committee, and you asked her if she had filed a complaint with the union, and she had been further told by you that she should have gone to her forelady or foreman instead of to the union.

Will you state the facts about the conversation, if any, to which she referred?

A. At a meeting with the grievance committee—I have forgotten if it was just the evening prior—however, Tuesday evening I meet with the grievance committee and go over all the grievances, and I just don't remember if it was the following day or two days later; I don't remember the

date; if it was July 13th or not; but I do know I went over to the department.

The grievance committee presented this complaint in writing from Edith Sherbon. I went over to the department where she works on the fifth floor of the cereal department, and Edith was working at her usual job in the line, sorting rice flakes, and I called her over to the desk and, in the presence of the forelady, Clara Gazzo ,and Mr. Richwalsky, the foreman, I said, "Edith, the grievance committee have a complaint here introduced by you that you were not treated right; that you had been laid off in preference to two other girls who were here less time than you were. Now," I said, "I have come over here to investigate that, but I would like to say this: Why did you go to the union headquarters when you could have come right here to the desk and taken a look at the seniority list and see where you stood in comparison to the length of service of these other two girls?"

I said, "That's your right, but you would have saved yourself some time and the grievance committee some time and me some time if you had gone up to the desk to see the seniority list."

I said, "The foreman or forelady have been instructed to let you see that list; you have that right. At any time you are laid off, we want you to look at that list and see that you have been properly treated."

We took the list and went down to her name and the names of the other two. The one girl she complained about in particular, that had been retained on the job when she was laid off—as I recall, it was not only being laid off but the other two girls were getting in more time than she had; I believe that was the way the complaint read.

[fol. 715] And I showed her where one of the other girls had seniority over her by one day; I have forgotten the date of employment, October 1st, and she was employed October 2d; that may not be the exact date, but as an example that's the way it was shown on the sheet.

I said, "Are you satisfied that that girl was here longer than you by one day?"

And she laughed and said, "Yes, that's right."

And I said, "The other girl, Violet Schneider, is a girl that has been around here and done several different kinds of jobs and," I said, "you know she has worked at about everything in this department and she can do most every-

thing and," I said, "the explanation you have had from the foreman and forelady was this, that this particular girl was retained at work instead of you because she could do all these different jobs that were to be done that you couldn't do, all of them."

And with that the conversation ended and I said, "Are you satisfied, Edith?"

She said, "Yes."

"I just didn't think," she said, "and I could have come here and seen that list."

And the reason for questioning her about going to headquarters; I told her she could have saved herself time and my time if she had gone to the foreman or forelady and seen the seniority lists, which show the lists of every employee in that department and their date of employment, according to the report I gave back to the grievance committee was that she was entirely satisfied with my investigation and since that time I haven't heard of anything with regard to the complaint. To the best of my knowledge it was entirely satisfactory to Edith, and also the grievance committee.

Q. Now, Miss Sherbon also testified that you asked her why she joined the A. F. of L. union and, quoting, "Your were pretty proud to walk in that picket line, weren't you?" Did you have any such—Did you ever make such a statement to her?

A. I deny both of those statements, for the simple reason I never asked anyone if they belonged to the A. F. of L., and I did not say to her whatever she said there. I don't recollect saying something about being proud about walking in the picket line?

Q. Yes.

[fol. 716] A. I never said that to Edith Sherbon or anybody else. Others, I will say, have discussed with me about being in the picket line; not at my request, we discussed it, but since the strike there was never any discussion, except it was always started by the employee.

Q. You were here when Frank Koontz testified, also, I believe. He testified to a conversation with you which he said took place in the men's dining room while Frank Koontz was there for lunch during the latter part of April or the first week of May, last.

He testified that you said to him, "Frank, I am surprised at you," and that he asked you, "What for?"

And that you answered, "About going to the outside."

Did you ever have that conversation with Frank Koontz?

A. I had a conversation with Frank Koontz in the dining room as he says, about five minutes to one. I was leaving the dining room and Frank was taking his lunch hour between one and two. Of course, the majority of the employees take their lunch between 12 and 1, but in the work Frank was doing—I don't recollect just why he was taking his lunch period at that time, but, as he come in the dining room, come across the bridge, I was going out of the dining room, and my recollection there was hardly anyone left in the dining room, and I said, "Frank, I would like to see you a minute."

We walked over to one side and sat down at a table right near the doorway, and I said, "Frank, now something has come to my attention, both you and your brother have been saying, about the treatment your father received here," and I says, "I want to straighten that out with you, because," I said, "I feel personally responsible for whatever took place."

I said, "As you know, your father is 72 or 73 years of age, and he was physically unable to continue in the capacity even as a watchman." "Now," I said, "I thought when I went to the board of directors of the company and made a recommendation to pension your father, that I was not only doing your father a favor, but I was doing something that I thought he was deserving of and something that you boys would appreciate." "But," I said, "after what I have heard, I have changed my mind. If you have such an attitude towards me and towards the company," I said, "I am sorry that I ever did it."

[fol. 717] "Now," I said, "just what right have you got to complain about your father being pensioned?" I said, "That is an unusual thing for a person to be pensioned. They are usually pretty well pleased." I said, "The conversation that I had with your father at the time, he indicated to me that he was tickled to death to go on a pension. We discussed the amount; we discussed everything in a general way, and your father was well pleased." And I told him that it was my recollection there was someone else there at the time, and they felt that way also.

"Now," I said, "if your father was pleased on being pensioned, I don't see why at his age you should deprive him of some few years of an easier life, get a little enjoyment out of it, that he didn't at least have to work." "Well," he said, "that don't interest me as much as it does John, because he is living with John." I said, "Well,"——

Q. That is his brother John?

A. Yes, his brother. He said, "As far as I am concerned, I don't care a whole lot, but," he said, "I have just been sore around here, anyway." He says, "You know, you have talked to me before, and you know about the trouble I have had with the different foremen." I said, "Yes, Frank, I have gone through all of that, and I think that after all you have been treated pretty well around here, because you recollect that you were laid off on one or two occasions and it was through my own efforts that you came back here. You were discharged one time," and I said, "at the insistence of your father, why, I took you back."

He says, "I know you did, and I am glad I got a job back because I needed it." And I said, "if you recollect, I saw you in the employment office or down in the street somewhere, and you begged me for a job." He said, "That is right, I needed a job."

"Now," I said, "with all that, I think you ought to be pretty well satisfied," and I said, "when your father was pensioned, he spoke to me about your other brother Willie. And I said, 'Well, Koontz, if Willie needs a job, I am willing to give him a job, if that is going to help you out any.'" Which we did.

I said, "After all I have done, I don't feel that you should feel the way you do." And he said, "Well, this so and so union, I guess has got everybody upset around here," and he says, "everybody wants to pick on me because they [fol. 718] think I go to meetings and join the union." I said, "Frank, I don't care how many meetings you go to or how many unions you join. That is your own business."

And I would say the conversation lasted possibly 45 minutes. To the best of my recollection it was about a quarter to 2:00 when I left him, and if I remember, he didn't have a whole lot of time to finish his lunch period in the regulation time, which he was supposed to take from 1 to 2:00.

Q. I think he also testified that that time you said when there is a question between—he said to you when there is

a question between a foreman and a worker, that you, Heinrich, always take the foreman's word, and that is one of the reasons he was dissatis--ed. Did that take place?

A. Well, as I remember, he did make such a statement about one particular foreman who he seemed always to get in a jamb with, and I believe he made such a statement, and I don't recollect just what I told him. But I know that he and a particular foreman seemed to cross paths pretty often, and I don't just remember what my answer was to that remark.

Q. Then, as I understand you, the only discussion of unions in that conversation was brought up by Frank Koontz himself, and all the discussion about unions you have testified to here now; is that right?

A. Yes, sir.

Q. Now, when John Koontz was on the stand, I think he testified that sometime during April, probably April 23rd last, he was called to your office, and he had a conversation with you about his father's pension and about his brothers Frank and Bill in which you said something to the effect that you thought he was better than the other two boys, or had more sense, or something, and a discussion about the A. F. of L. Union, and finally about a better job in the machine department and that you had said, "At the present time there isn't anything more that I can do for you, so you can't get it."

Will you please state to the Trial Examiner what the circumstances of that meeting were and what was said, as you recollect it?

A. Well, I had a talk with John for the same reason I talked to his brother, inasmuch as I was responsible that his father had been pensioned, and he criticizing me and the company for doing what we did. I called John up to [fol. 719] the office. I had numerous talks with John, and I might go back four years or six years, he was in the employ once before, and during a lull in business he was laid off at that time. He worked for the advertising stock department, I believe. And he was laid off, and his case was similar to his brother. He kept after me until I gave him a job. He sent word in with his father to see me to see if I couldn't possibly put him on. So I was also instrumental in having him returned to the job—to his job. And as far as the discussion with him, I said I had had

quite a few of them and I did think John was far above his two brothers in ability, and effort, and everything else. And I had hopes that he eventually would work in and take the place of an older man who was in the receiving department, and I think I told him that. I said, "You have an opportunity down there, and I don't see any reason why eventually you can't look after the receiving department." The man in that department was a man along in years, I would imagine 55 or possibly 60 years of age and looking forward to having a younger man coming along, and I had kind of picked John, although the other two young men that were on that same job with him, both had had a high school education; in fact, I think one of them had one or two years in college. Regardless of either one of them or both of them, John in a good many ways was superior, as far as his knowledge of the work and the effort that he put into it.

And I talked to John—and I talked to John possibly a year before that. And getting back to the conversation, as far as the purpose of having him up that particular day, I talked to him about his father's pension.

Q. And you heard that he had complained?

A. Yes; I heard that both he and his brother had complained, and as I recollect, John didn't say that directly, but I think he tried to say that his father had told someone and that person had reported to me. I don't just recollect how it got to me, but the news did get to me. So I had told John practically the same story that I have told you about his brother Frank. I said, "I feel rather hurt after what I done in getting your father a pension. I think a man 72 or 73 years of age doesn't—if a man of that age doesn't deserve something, why, I can't understand it and I can't understand your attitude." I went after John pretty strong.

Well, John said, "I think he could have still worked." [fol. 720] I said, "Well, I don't think you are fair to your father to say that he could have still*ed* worked when you know that he is not physically able to do even a watchman's job." And I said, "I think you are very unfair and unjust to expect your father to work."

We went into detail on the amount of the pension that he had, that he was to receive, and John says, "I still don't think that it is enough." I said, "Well, John, if

you feel that way, I will do what I can in asking the board if they will reconsider your father's case." I said, "Maybe it isn't enough pension." "At the time I thought it was enough and I recommended it, and it was on my recommendation that it was approved." I said, "If you feel that isn't enough, I will take it up with the board of directors and see if they are willing to give your father any more."

And we had quite a discussion as to the amount of money and just what his father's requirements were. I told him that I felt that a man of his age, the necessities of life that he would require and a younger man's was quite a bit different. And he says, "Well, you know, my father indulges a little bit," he says, "in the morning and at noon time and in the evening." And he says, "That takes money." I said, "That is well and good. He knows how he wants to spend it. That is not my business."

So the conversation pretty much ended that way as far as his father was concerned.

Now, getting into the conversation of unions, John brought up again, he said, "Well, I guess I don't have much chance any more down there." He said, "One time you thought I was a pretty good fellow and thought I had an opportunity there in that department," and he says, "I guess there isn't much chance any more." He said, "I go to meetings and I believe in unions, and I think that it is all up down there." I said, "As far as I am concerned, it isn't John." I said, "If you do your work like you have always done and show the same effort, put the same effort, show the same initiative you have had in the past," I said, "I don't see where any unions are going to interfere with that." I said, "Because after all a man's ability and the effort he puts in his job is going to determine how far he goes." And I repeated to him the same as I repeated to any other employees that I ever talked to, "As far as the union is concerned, I don't care if you belong to a union or [fol. 721] if you don't belong to a union." I don't care if they went to meetings or didn't go to meetings.

Q. How much was this pension?

A. $40 a month.

Q. What was Mr. Koontz' job when he worked there?

A. Well, he had been, to the best of my recollection, during my time, at least, he had been a laborer and a watchman. The last few years he had been a watchman. I don't mean

a factory watchman; he was a gate watchman and that, of course, didn't require a whole lot of effort, but nevertheless his father was very tottering, a very conscientious man, but that didn't offset his physical condition, because he had reached the stage where he was unsafe as far as he himself was concerned to be working around or doing anything. At least, I felt that way. He was at the end of the platform, and in his position—there is a drop there possibly of four to six feet, and it was down at that end of our shipping platform, and trucks are in and out of there all day long. And he would get down and go out to the gate, and he was always around there. And it was a fact that we were afraid sooner or later he would be bumped by a truck or that he would fall off the platform. And it was on the strength of that, and some of the men, the foremen who were down at that end of the building felt that he was physically unable to continue any longer. And from my own observation, I made the recommendation that I did.

Q. Was that a pension to which the employees contributed in any way or was it purely a company pension?

A. No; it is not. It is a pension that is purely voluntary on the part of the company.

Q. About how much, if you recollect, did Mr. Koontz, Sr., make at his job that he last worked at?

A. Well, I really can't say, but I believe that his rate was 47½ cents an hour or possibly 50 cents an hour. I believe—I am not sure just what his rate was.

Q. Well, about how much monthly would it run to, approximately?

A. Well, as I remember, when I figured it up, it was about $65, but I am not sure. I don't know offhand just what his rate was, but I would say that his pension was better than half of what he had been making. As I remember, it was about, oh, close to two-thirds of what he had been making.

Q. Now, coming to the testimony of Matt Canjar, I think this witness testified that he had a conversation with you [fol. 722] sometime between the 15th and the end of April of last year about quitting time. I think he said he saw you on the bridge between the bean and the spaghetti buildings, and that you stopped Canjar, and you said that you had heard that the witness was at a union meeting, referring to the A. F. of L. union, and that you undertook to lecture him about having been at the meeting and stated that the

company had been very good to Canjar during the depression.

Will you state what happened in that conversation and what the conversation was as you recollect it?

A. Well, I had a conversation with Matt about five after 5:00 between the bean building and the shipping building, not between the bean and the spaghetti buildings. Mr. Locke, who is in charge of the bean building, had told me at lunch time that Matt was getting pretty unruly, and I said, "What do you mean?" "Well," he says, "Matt has been getting to the place where he is calling people dirty names, and everyone that passes him, he stops and holds a conversation with them. He leaves his job and goes into the wash room. If anyone goes in, he follows them in. And he is just getting kind of tough."

And I said, "Well, I will have to talk with Matt the first opportunity I have." So that evening about 5 o'clock I happened to be in the shipping building, and I started over towards the bean building, and Matt was coming down the bridge toward the shipping building on the way through the men's dressing room. And I did stop Matt. I said, "Matt, I want to talk to you." I said, "I have been hearing some pretty bad reports about you." I said, "You have been around here eight or nine or ten years," and I said, "so far as I know, you have always been a good worker. You have done your work and got along with everybody, but just lately you seem to be all upset about something, and Mr. Locke feels that you are not doing the right thing." And I said, "I would like to know just what is the matter."

Well, like most of the conversation, Matt says, "Oh, you are picking on me. You are picking on me. I have been going to the union meetings. I joined the American Federation of Labor." And I says, "Matt, I am not here to talk to you about unions or meetings; I am here to talk to you about your action in the bean department." I said, "Why, what right have you got to call anybody names." I said, [fol. 723] "You have got a right to talk to people if you want to talk to them, I guess, as long as it doesn't interfere with your work." I said, "But you have no right to call anybody dirty names." I said, "Now, you are going to stop that because we can't put up with it." I said, "We have about two thousand people here, about half female employees and about half male employees," and I said, "if we

permitted loose talk like that among the employees, why, we wouldn't have a very good reputation around here. I am afraid a lot of our people won't stay with us."

Well, Matt denied it. He said that he hadn't done anything out of the way, that he was doing his job. He said, "Don't I do my work?" And I said, "Yes, Matt, from my observation, whenever I am up there," I said, "you are on the job." But I said, "I am not up there all the time, and I am only probably there once a day, sometimes not that, but other times I might go through two or three times a day." But I said, "I haven't myself noticed anything in particular out of the ordinary except what Mr. Locke tells me." And I said, "All we ask you to do is do your job and you will get along with everybody." And I warned him again about his talk. I said, "Matt, you cannot call anyone any names." And the conversation ended, and I went on to the bean department, and Matt went on home, and that is the last I heard of Matt, as far as I was concerned, and since that time we have been very friendly, and I talked to Matt almost every day.

Q. I think Canjar stated that sometime about that time or shortly after he was transferred from, I think he said—what is it, the No. 1 hoist, the first hoist to the second hoist?

A. First and second.

Q. And that at the first hoist he had more opportunity for rest periods than he had at the second hoist, and that he felt that it was discrimination against him that that shift from hoist to hoist was made. What do you know about the transfer?

A. Well, as far as being transferred, that probably is Matt's way of expressing it. The two jobs are possibly from here back to the door apart (indicating). They are both hoists. On one end, I think at No. 2, the baskets are brought from the floor below up into the sterilizing room, and on the other end, No. 1, we will say—I don't know which [fol. 724] is 1 or which is 2, it doesn't make any difference—but on the other end, the man there lets the baskets drop, drops the baskets after being sterilized to the floor below. Now, it is my understanding—I checked with Mr. Locke sometime ago, when I understood that Matt complained about that, and I checked with Mr. Locke. I said, "Matt, I understand is dissatisfied because you have changed his job." And he said, "Well, I haven't exactly changed his

job. He is back on the other hoist." But he says, "He can make just as much money there as he has been making on the other job." And he said, "I want to get another fellow broken in because," he said, "I can't depend on just one hoist man or two hoist men." He said, "We ought to have another man broken in." And as far as I know, the transfer of this job, as Matt calls it, is only a temporary proposition. I don't think Mr. Locke had any idea of changing Matt as a permanent man there, but it is like a lot of those jobs, the men change back and forth. There is no set rule that this man stays on this job all the time, or some other fellow, some other man stays on the job. And Matt's earning capacity, to the best of my knowledge, hasn't been changed a bit. The piece work rates are the same. It may be that one day on the one hoist, on the hoist taking the baskets up into the sterilizing room might make a little more money that particular day than the man down on the other end, for the simple reason that coming from the lines there is a steady flow of baskets going up to the sterilizing room, but on account of the sterilizing retorts holding three baskets, and if they happen to go in at a certain time, they don't all come out, that there are lulls in the man's work on the other hoist and, naturally, if it should happen toward the end of the day, that so many baskets have come out that day, of course, he is going to be short, but over the period of a week or the payroll, there is no reason why both men on either job, why they shouldn't make the same amount of money.

Now, I know that I checked up at that time, and if my memory is correct, Matt had made about 75 cents an hour since the first of the year, and I know just about a week ago I was talking to Matt, and there was some question in Matts mind how the pay was figured, and I tried to explain to Matt, and I said, "If you don't feel satisfied with my [fol. 725] explanation," I said, "I will get the records, get the piece work rates and show you just how it works." Matt, says, "I understand how it works," but he says, "I am not satisfied." So I took two members of the grievance committee up and I said to these men, I said, "I think you should explain to Matt just how he is being paid." I said, "He is, to my knowledge, being paid absolutely according to the agreement," that Matt's piece of work is figured on a basis of the payroll period for a job. In other words, if he has two different jobs during the payroll period on piece

work, why, it is averaged for each particular job, whereas if he is on the same job the entire payroll period, it is averaged over the payroll period. And the grievance committee that was their understanding, and I explained to him that it was their duty to try to convince Matt that he was being paid exactly right.

I do know this, that we made up on one payroll period just prior to that just about, I think $3.34 that he was below his average; that is, he had made less on piece work and his day work, but to guarantee his hourly rate for the payroll period, we paid him $3.34 to make up that average for the payroll period, to guarantee him his hourly rate.

Q. Now, this second hoist takes the baskets up, and all the baskets that go up in that hoist come down in the first hoist?

A. That is right. There are only two chutes, one on one end, where they go up, and one down on the other end, where they come down.

Q. And everything that goes up must come down?

A. That is right.

Q. So that over a period of time, all of those baskets come back, don't they?

A. That is correct.

Q. Now, you said that on this piece work rate that you tried to explain to Matt that that was his, was averaged according to the agreement. What agreement do you refer to?

A. Well, the agreement that has been posted on the bulletin boards.

Q. With the union?

A. That is right.

Q. I see. And that was the grievance you tried to explain to him?

A. That is correct.

Q. And what grievance committee do you refer to, the union's grievance committee?

[fol. 726] A. Yes, sir, five members.

Q. You say they didn't have much better luck with Matt than you did?

A. I am afraid not. Matt still says, "I don't care." He said, "I still like to get paid like we used to get paid." I said, "Matt, maybe you are right. I can't answer that any." I said, "You talk to these gentlemen here. They are the

fellows you should talk to, not to me." I said, "So far as I am concerned, you are being paid according to the agreement," and I said, "They will explain that to you."

Q. Now, when Mr. Joseph Pavlakovich, when he testified here, it seems he testified that he had a conversation with you about two weeks before the strike and that during that conversation you asked Joe, "Well, what union do you favor?" And that he replied, "No one yet." And you said, "Do you believe everything that the outside organizers are telling you." And he replied, "Not all of it; most of the stuff I do." Then you said to Joe, according to his testimony, "Well, if you don't believe all the outside organizers, you go up and ask Frank Kirschner, because he was once an A. F. of L. man, and he says that A. F. of L. is no good."

What can you say about that alleged conversation?

A. I had part of such a conversation with Joe, but nothing like the last part of it.

Q. Will you state just what the conversation was, please?

A. Joe and I had quite a number of conversations. Joe had been employed about eight years with the company, starting there as a boy. I think he is about 26 years of age now, and I guess he had been there eight or nine years. That would have made him about 16 or 17. And Joe had stopped me on numerous occasions asking for an opportunity down in the electrical department. He said that he had done electrical work; that is, he had taken it in night school, and that he wanted an opportunity down there. Well, Joe was a bone of contention all along about getting down to that job. Any time anything came up, why, Joe said, "You haven't given me a chance in that job." And I had lots of conversations with Joe.

I had one not so long—I have forgotten just exactly when, probably along in March, early in the spring. Joe was on an elevator, and Joe went down to the second floor, took a gallon dipper, filled it with stuffed olives and brought it up to the mustard department on the fourth floor and [fol. 727] proceeded to pass these olives out over in another department, at least, to girls in another department. Of course, the other department was not very far away, I will admit, but it wasn't on Joe's elevator. If Joe had been on his elevator, he couldn't have been handing out olives to these girls even if it was only a short distance away. Well, at that time we gave Joe a week off, not on account of that

one offense. Joe had had many complaints, the way he had left his elevator and went back in the other parts of the building. So I did have a conversation and an occasion to talk to Joe again, because they told me that Joe was leaving his elevator and he was going into the pickle department. Of course, the elevator goes up to that part of the building, but the girls were not working right at that particular place. And Joe was talking to the girls, and some of the girls were being frightened by Joe about joining the union.

So on this pacticular day I called him down with Mr. Koehrer, his foreman. I told him, I said, "Now, Joe, your job is running an elevator, and you have got to stop going around the departments, leaving your elevator and talking union or anything else." I said, "I am interested in seeing that you do your work." Well, Joe brought up the old story that he was sore because I hadn't given him a chance down in the shop. He was blaming me for not putting him in the electrical department. And I said, "Well, Joe, I have done all I can. Have you talked to the foreman of that department?" He said, "Yes." I said, "Well, couldn't you sell him the idea of you going to the shop?" He said, "No." I said, "Well, I will have to agree with you. I can't either." I said, "I don't know why he isn't willing to give you the chance down there. You know that we have given any number of other fellows a chance in the factory." I told him, I says, "I believe about 25 per cent of the employees in our mechanical department at some time or another have worked in the factory, either as boys and wanting the opportunity of going down there to learn a trade or as mechanics that had taken a job in the factory, and when there was an opening in the shop, if we needed anyone, why, we transferred them there." And I would say that probably 25 per cent of our employees now working in the pipe, in the electrical, and millwright, and machine shop were men that sometime or another had worked in the factory, and when we had an opening there, if there [fol. 728] was an opportunity, why, we gave it to them, especially if the man was qualified. And, of course, in some cases we sent young fellows down there that wanted to learn the trade when we felt that they were capable of carrying on and doing the work.

Well, the conversation with Joe was just about at an end, except that Joe said that, well, he had made up his

mind in a few months, when he made a little more money he was going to Chicago and take an electrical—I think, if I remember correctly, going to the Conn Electric School, some such a name. And I said, "Well, Joe, what do you hope to gain by doing that?" "Well," he says, "you can't get a job as electrician unless you have gone to school." I said, "Don't you think practical experience would be just as well as going to a school?" And he said, "Oh, no, you have got to have a diploma." I said, "Well, Joe, I wouldn't be so hasty in deciding to go to Chicago, especially if it is going to cost you the amount of money"—he had said, if I recollect—he said something like $600, or it was quite an amount, anyway.

And I said, "Well, Joe," and I said, "don't be foolish and spend your money and getting nothing in return." I said, "What you ought to do, I think, if you have had night school work in electrical work, is to try to get in some place where you can get the practical experience." And I said, "You know that I have done what I could here." And I said, "I failed, and so have you. You haven't been able to sell yourself to the foreman, and I haven't either." I said, "I don't know why," but I said, "that is a fact." Well, Joe, as the conversation ended, Joe still said he intended to go to this electrical school in Chicago, when he got to the place where he felt that he could finance himself. And he said, "Would you give me a job if I get through there?" I says, "Sure, if you come back and I know you have learned the work and you are qualified, I will do all I can to get you in our electrical department.

Now, that is about the extent of the conversation. As far as what Joe has said in his testimony there, I I don't recollect any such conversation. There may have been a conversation about unions, because that was the general topic as soon as you talked to anyone or questioned them about the way they were doing their work or what they were doing, they would raise the question.

Q. Did you tell him to go up and see Frank Kirschner? [fol. 729] A. Never.

Q. About these unions? Then there was nothing in that conversation that you have just recited about unions, was there?

A. I don't recollect anything about what he said, about what he justified there, that I had told him to go to see

Frank Kirschner, that I said anything about going to meetings or joining unions, because if he did, I only repeated that I did to every other person I have talked to, they could belong to any union they wanted to, could go to any meeting they wanted to.

Q. Do you think you made such a statement to him?

A. I don't know if I did. If I did, I made it as I did to others.

Q. Well, the statement you say you may have made to others doesn't refer to his testimony about the alleged Frank Kirschner?

A. I don't just get what you mean.

Q. You weren't talking about Frank Kirschner?

A. I was not talking about Frank Kirschner.

Q. Now, what you say you did say, if you said anything, was that you weren't interested in unions, he could join any union he wished; is that right?

A. If that conversation was raised, I might have said that to him because I have said that to others. My memory on that is not clear. I don't remember saying that, and in particular to Joe, but I might have said that, because I said it to others, that they could belong to any union that they wanted to; they could go to any meetings that they wanted to.

Q. I guess it is not one of the duties of the elevator operators to distribute stuffed olives among the girls, is it?

A. Not as a rule, no.

Q. Do you remember the testimony of Aloyse Lukitsch? You heard him testify?

A. Yes, sir.

Q. On cross examination Mr. Lukitsch testified that at one time, when his foreman, Mr. Krup, wanted to have him fired, that he was up in your office that afternoon with Mr. Krup, and that Mr. Heinrich said that inasmuch as the witness had been there for ten years you, Heinrich, would not allow Krup to discharge him.

Would you state the circumstances and the conversation as you recall it?

A. Well, Mr. Krup had had trouble with Mr. Lukitsch [fol. 730] quite often and Mr. Krup on several occasions said, "I have got to get rid of that man. He doesn't do what I tell him to do." And that particular day he called me up and he said, "I am going to fire Lukitsch, Aloyse

Lukitsch." And I said, "Well, now, why do you want to do that?" He said, "Well, he will not do what I want him to do. He always wants to do something else. He refuses to do what I tell him to do. He doesn't want to listen to me." I said, "Well, you bring Aloyse up here to the office." I said, "I want to talk to both of you."

As I remember, it was about late in the afternoon, 4, possibly 4:30. I know it was close to quitting time. They were both very much excited. Mr. Krup was excited, Mr. Lukitsch was excited, and both were talking with their hands, and I couldn't possibly hardly get a word in edgewise. I said, "Now, let me do a little talking. What seems to be your trouble?" And Frank says, "Well, Louie"—I think he called him Louie. He called him Louie. "He doesn't do what I want him to do, and I am not going to put up with it any longer." And they went into detail of what the argument was about, what the discussion was. And finally I said, "Well, Frank, Louis has been here about ten years." And I says, "I think you better give him another chance." I says, "I think both of you are up in the air and excited." I said, "Both of you better get on the job and calm down a little bit." And I said, "I think everything will be all right." And the conversation ended there and they left the office. And I haven't heard of him since until the other day.

Q. Now, had Mr. Krup's dissatisfaction with Mr. Lukitsch been recent or had it extended over a long period of time?

A. Well, as far as I can recollect, it has been for a long time.

Q. It is greater now than it was a couple of years ago?

A. No; I really think they get along better now than they did a couple of years ago. At least, I haven't had any complaint from either source.

Q. Now, there has been some testimony, Mr. Heinrich, that Joe Greenier is a foreman or assistant foreman in the plant; is that true?

A. No, sir.

Q. What are his duties? That is, how would you class [fol. 731] his duties? What does he do?

A. Well, he works in the branch house stock department piling stock, and I would classify him as a worker. I would say he is a working group leader. In other words, we have

checkers. They work in a crew of four men loading cars, and at times we have 12, 15 loading crews loading carloads of finished goods, and each one of those crews, we have a man that is known as a checker. He has the orders calling for the kind of goods to be shipped, and he kind of looks after the three men, as far as seeing that they pick up the goods according to what the order calls for, loads it on trucks, and loads it into carloads and checks it in.

Now, the checker has a similar job as this man you refer to. He is a working group leader, only that this particular man piles finished goods coming from the department.

Q. Piles them?

A. Piles them into the warehouse, stores it.

Q. Is he an hourly employee? Is he paid by the hour?

A. Hourly employee, always has been.

Q. Does he have any authority to hire or discharge?

A. No, sir.

Q. Now, do you have foremen's meetings at which the foremen are required to attend?

A. We have scheduled meetings about twice a month.

Q. Does Mr. Greenier attend those meetings?

A. No, sir, never did.

Q. Do you know Edward Grynkowski?

A. Yes, sir.

Q. Sometimes called Eddie Kranz among the men?

A. Yes, sir.

Q. Is he a foreman?

A. No, sir.

Q. What are his duties?

A. Well, he tests glass. When we receive carloads, a caload shipment of glass, either purchased from outside sources or manufactured by our own glass factory at Sharpsburg—when we receive those shipments, he tests the capacity, the strength of the glass, the finish, and just a general inspector of glass. He works alone. That is, there is another man with him, an older employee, who has [fol. 732] been on that work for some number of years. He works with him in checking this glass.

Q. Is he an hourly employee?

A. Hourly employee.

Q. Does he attend any foremen's meetings?

A. No, sir.

Q. Does he have any authority over anybody else?

A. No, sir. He works alone, except this man who is an older employee there that works with him doing the same kind of work. He doesn't work either for him; he just works with him.

Q. Who is Charlie Hiebner?

A. Charles Hiebner is an old employee in the mixed pickle department. I think he has been with the company about 42 years, something like that. He is responsible and actually does make sweet liquor at times, and is just a group leader of men in the mixed pickle department.

Q. Is he a foreman?

A. No, sir.

Q. Does he have any authority to hire or discharge?

A. No, sir.

Q. Or recommend for discharge?

A. No, sir.

Q. By the way, do you know where Mr. Hiebner is now?

A. On Saturday morning I believe he was struck by an automobile, and the report I have had was that he was either in the hospital or is possibly at home with broken ribs and a badly battered nose. And so far as his position, I haven't had a chance to investigate. I believe our nurse is looking him up today to see just what condition he is in, but that is the report we have had from his home, that he has possibly two or three ribs fractured and also a badly battered face and nose. He was struck by an automobile, I believe on East Ohio Street, but I am not just sure of the particular place.

Q. Do you know Anthony Horner?

A. Yes, sir.

Q. Is he a foreman?

A. No, sir.

Q. What are his duties?

A. Well, he is connected with the garage, and I am not familiar with that except that I do know that he is a timekeeper there, and I would say that he is a chauffeur, be- [fol. 733] cause I know he brings cars up, trucks up to the factory, brings the service car up and drives it up at times, not all the time, but part of the time. And as far as I know, he is—I think he is assistant in the garage and keeps the time and drives trucks around, bringing them up to the department if the other truck drivers are not there.

Q. Is he an hourly worker?

A. To the best of my knowledge, he is.

Q. Does he have any authority to hire or discharge?

A. No, sir; Mr. Lelanchon is the man in charge of that department, and he is the man.

Q. Does he attend the foremen's meetings?

A. No, sir.

Q. Is he a foreman?

A. No, sir.

Q. What are his duties?

A. Well, a mechanic. He specializes in looking after labeling, filling, and capping machines on bottled goods. He looks after the labelling and filling equipment and capping equipment, and is in our vinegar bottling department, and in our mustard department, and at times in our peanut butter department and mayonnaise department. He is the mechanic, repairman. He looks after the actual repairs of those machines. He works along on that work most of the time. Occasionally he has another fellow working with him, another younger man.

Q. Does he have any right to employ or discharge?

A. No, sir.

Q. Does he attend the foreman's meetings?

A. No, sir.

Q. Is he an hourly employee?

A. An hourly employee.

Q. Does he get an hourly wage?

A. Always has been.

Q. Do you know Fred Gerhard?

A. Yes, sir.

Q. Is he a foreman?

A. No, sir.

Q. What are his duties?

A. He is a repairman, mechanic in the can department on the can stamping machines and also on the repairing of dies and the making of dies for the can stamping machines. [fol. 734] He is just a mechanic to keep the machines in condition, working condition, and also making dies. He is just a group leader of that particular part of the can department.

Q. Is he an hourly employee?

A. Yes, sir.

Q. Does he attend foremen's meetings?

A. No, sir.

Q. Does he have any right to employ or discharge?
A. No, sir.
Q. Do you know Frank Capan?
A. Yes, sir.
Q. Is he a foreman?
A. No, sir.
Q. Do you have any such persons as assistant foremen in the plant?
A. Not in the sense of—in the eyes of the management. In the eyes of some people there might be such a man. For instance, in the can department or in the spaghetti department or in the bean department, in the case of Mr. Locke, Mr. Locke is foreman of that department, and in the eyes of the workers—but there are also about five other foremen in that department, Mr. Vajentic and John White and Dave White, and Mr. Marzolf. Now, in the eyes of some people, they may call them assistant foremen, but they are just foremen.
Q. In other words, you have all foremen classified as foremen?
A. That's right.
Q. Even though one of them may work under another?
A. Thats right. He may be, in the minds of some people. You might call him an assistant, but he is just a foreman.
Q. Coming back to Frank Capan, what are his duties?
A. He is a group leader in the branch-house-stock department. His work is similar to Joe Greenier.
Q. Is he paid an hourly wage?
A. Paid an hourly wage.
Q. Does he have any right to employ or discharge?
A. No, sir.
Q. Does he attend the foremen's meetings?
A. No, sir.
Q. Do you know Bill Sipple?
A. Yes, sir.
[fol. 735] Q. Is he a foreman?
A. No, sir.
Q. Assistant foreman?
A. No, sir.
Q. Straw boss?
A. No, sir.
Q. What are his duties?
A. Well, I would say he is *is* just a group leader; maybe two or three boys, in the bottling department.

Q. Is he an hourly worker?

A. Yes, sir.

Q. Does he have any right to hire or fire or recommend for either?

A. No, sir.

Q. Did he attend any foremen's meetings?

A. No, sir.

Q. Do you know Louie Bergaski?

A. Yes, sir.

Q. Is he a foreman?

A. No, sir.

Q. Boss?

A. No, sir.

Q. What are his duties?

A. He is a group leader in the cooperage department; that is, in one branch of the cooperage department. We have three branches in the cooperage department. This particular place is up in the factory near the mixed-pickle department. Mr. Koehrer is the foreman of the department and Louie works there with the coopers. He doesn't work all the time, he works part of the time, and he is simply a group leader of those men working with him.

Q. Do you know Louis Murphey?

A. Yes, sir.

Q. Let's get back to Bergaski first. Is Bergaski an hourly employee?

A. Yes, sir.

Q. Does he have any right to employ or discharge or recommend for either?

A. No, sir.

Q. Does he attend any foremen's meetings?

A. No, sir; never did.

Q. Now, Louis Murphey, what are his duties?

A. His duties, before or while he was in the employ of the company, was a clerk at times; at other times he worked out on the floor. To the best of my knowledge thats what [fol. 736] he had done, and he was just a leader out on the floor, a group leader, when he was on the floor, but, when he was in the office, as I recollect, he checked the c. o. d.s from the drivers when they came in.

Q. Is he a foreman?

A. No, sir.

Q. Is he an hourly employe-?

A. Yes, sir.

Q. Does he have any right to employ or discharge?
A. No, sir.
Q. Did he attend the foremen's meetings?
A. No, sir.
Q. Do you know Frank Lewandowski?
A. Yes, sir.
Q. Is he a foreman?
A. No, sir.
Q. Is he an hourly employee?
A. Hourly employee.
Q. What are his duties?
A. Well, he had been looking after the city room where we pack broken cases, broken-case orders. In other words, any order that called for a certain number of bottles or cans other than a full case would be packed into one case and made up into what we call a broken-case order. There were four or five boys, at times, and sometimes more, working in that department, and Frank worked along with them. He looked after them. He directed what they did and checked on the orders and just generally supervised the work there, but, at the same time, he worked with the men in doing that. In other words, he was the leader of that group.
Q. Is he a foreman?
A. No, sir.
Q. Boss?
A. No.
Q. Have any right to employ or discharge?
A. No, sir.
Q. Attend foremen's meetings?
A. No, sir.
Q. Not recognized in any way as doing foremen's duties; is that right?
A. That's right. He, at the present time is not doing that work. I think he is working either in the office, the same as Murphey, or on the floor; I am not sure, but another young man by the name of Andrew Baven is now doing the same job that Frank Lewandowski did.
[fol. 737] Q. Is that the man who testified here?
—. That's right, Andy Baven testified here the other day. Andy is in the same *ac*pacity that Frank Lewandowski was, I believe, and Frank, at the present time, is doing the same job Murphey did, but I am not sure of that.
Q. Do you know I. C. Bennett?
A. Yes, sir.

Q. Is he a foreman?

A. No, sir.

Q. What does he do?

A. His work is similar to Fred Gerhard's in the can department, only on other machines; where Gerhard has the stamp-capping machine and also the manufacture and repair of dies, Bennett has the slitting machines and Bennett is the mechanic on those machines, to keep them ground, in condition, to keep them properly adjusted to properly cut the plate, and as far as his job, he serves in the same capacity as Gerhard, only on different machines.

Q. Do you know C. O. Harris?

A. Yes, sir.

Q. Is he a foreman?

A. No, sir.

Q. What does he do?

A. He holds a similar job on another type of machine; the cap-lining machines, or compound-applying machines, the machines that put the rubber compound in the cap. He looks after the maintenance of those machines and sees that the girls have the caps to line, brings them to them, takes them away, and keeps a check on how many they do, and that they are always supplied with these caps; keeps the machines in condition and sees they properly do their work as far as the way the machines are working, and just supervise that particular operation, the cap-lining machine or the compound-applying machine.

Q. Is he a foreman?

A. No, sir.

Q. Coming back to Mr. Bennett, how is he paid?

A. By the hour.

Q. Hourly wage?

A. Yes, sir; always has been.

Q. Does he have any right to employ or discharge?

A. No, sir; Mr. Spangenberg is the man does that. He is the foreman of that department.

[fol. 738] Q. Does Mr. Bennett attend the foremen's meetings?

A. No, sir; never has.

Q. How about Mr. Harris; how is he paid?

A. By the hour.

Q. How would you compare the relative work of Bennett and Harris and Gerhard?

A. Well, their work is very similar, as far as the capacity

of their particular jobs. They are all mechanics in the sense Mr. Harris is not quite the mechanic that Bennett and Gerhard are, but he is enough of a mechanic that he can keep the lining machine in operation and working order. As far as their responsibilities, they are the same, except on different kinds of machines.

Q. Now, how are foremen paid in the plant?

A. By the month.

Q. Paid by the month?

A. Yes, sir.

Q. About how many foremen have you?

A. About 85.

Q. And about how many foreladies do you have?

A. 26 or '7, I am not sure—I think it's 27.

Q. About how many people are there in your entire supervisory force, including these foremen and foreladies, if you know?

A. Throughout the entire plant?

Q. Yes, sir.

A. Well, in a supervisory capacity——

Q. I am referring to the Pittsburgh plant.

A. Taking the male and female employees, I would say we have—Do you mean including the foremen and foreladies?

Q. Yes, sir.

A. Oh, offhand, I would say there are 200; between 200 and 300. I couldn't guess. A good many of them are in minor capacities, over the entire plant. Offhand I would say probably 250 that you could call supervisors in a sense.

Q. They are all salaried people?

A. No, just the foremen and foreladies are salaried; the others are all hourly workers.

Q. You don't understand my question about supervisory employees. I mean people who are in a supervisory capacity and paid by the month.

A. They are foremen annd foreladies; they are paid by the month.

Q. And who else?

]fol. 739] A. Well, there are some workers in the offices, clerks, that are paid by the month; they work around the supply department, the stock-control department. There are some girls and also men there who are clerks, that are paid by the month, and there are some in the engineering

department that are paid by the month, stenographers and clerks, draftsmen.

Q. Well, now, who are the superiors of your foremen?

A. Well, I am recognized, I guess, as their superior. I am in charge of the plant, superintendent, and Mr. Charles Heinz, my assistant.

Q. Are there any persons who work out of your office as sort of general foremen, while they don't carry *carry* a foreman's title?

A. Yes, there are, there is Mr. Hayes and Mr. John Anderson and Mr. Fred Heinz, Mr. Romer, who, part of the time, is in Pittsburgh, and away quite a bit of the time at other plants. Mr. Romer doesn't do a whole lot any more. At one time he was pretty active at the Pittsburgh plant around the superintendent's office, but the last few years his work has taken him away from Pittsburgh, to our Canadian plant and also our London plant.

Q. Then your supervisory force consists of these people you have named plus the foreman and foreladies; is that right?

I want you to answer on the record. You shook your head.

The Witness: I didn't get the last question.

Trial Examiner Walsh: Will you read the last question?

(Previous question read by the Reporter.)

A. That's right.

Trial Examiner Walsh: Would you like a recess, Mr. Bostwick?

Mr. Bostwick: All right, sir.

Trial Examiner Walsh: Suppose we have 10 minutes.

(Thereupon a recess was had.)

Trial Examiner Walsh: The hearings will come to order.

By Mr. Bostwick:

Q. Now, I think you testified, Mr. Heinrich, that you had been employed there for 23 years at this plant.

A. 23 years in—I think it will be 23 years the first of January.

[fol. 740] Q. And for how long have you been the general superintendent?

A. Since 1928; some time, I believe, in 1928. At the

death of Mr. Heinz, who was superintendent; since his death I have been superintendent, and that's, I believe, some time in 1928.

Q. Yes. Now, coming back to the days preceding the strike, what can you say about the unrest and the effect upon the efficiency of the plant during the organization drive of these unions prior to the strike?

A. Well, some time prior to the strike, during the activity of unionization or drive on it, I would say, possibly two or three months prior to the strike, our production started falling down in quite a number of the departments, due to the unrest of the workers, is the only thing that I can acco-nt for; everything else was the same, same equipment, the operations were practically the same, but during that time we did have a reduction in the efficiency of the workers. In other words, we had less production, as a whole, than we had had prior to that.

Q. Was that very marked?

A. In some cases, yes. It seemed where there was the most activity, where there were the most complaints, seemed to suffer the most.

Q. Well, now, what, if any, instructions did you give the foremen in the early part of the time that you began to be worried about this inefficiency?

A. Of course, being superintendent of the factory, it is my responsibility to see that we maintain the efficiency of our operations, that our costs were kept in line, costs of production were kept in line, and I impressed upon them that it was their duty to see that things were carried on just the same as always; that we had to maintain the quality, we had to maintain our costs, we had to maintain our efficiency of operation, and that, as far as the employees were concerned, every employees was the same, regardless of how they felt or if they had any feelings whatsoever.

Q. What do you mean by "feeling"?

A. Well, if they had any feeling they wanted to join the union or not join the union.

Q. What union?

A. The American Federation of Labor or the employees' association; regardless of how they felt about any kind of [fol. 741] a union we wanted them to carry on and do their work just the same as always, and it was their responsibility to see this work was carried on.

As far as the treatment of the employees, there was to be no discrimination in any way, if they knew how they felt, how the individuals felt.

Q. That, is, if the foreman knew?

A. If the foreman knew, which, in my estimation, they did not know. They knew there was an unrest, that was plain to be seen; but as far as them knowing, as far as the foremen or foreladies knowing how an individual stood, it's my honest opinion that they knew—that they did not know of how an employee stood, except probably in some individual cases where the employee had openly said to the foreman or forelady how they did stand; but, regardless of any activities, they must carry on the same as they had in the past.

Q. Did you give any instructions to the foremen or foreladies in the early part of this situation about whether they should interfere in any way with the union organization?

A. Yes, I absolutely did. I talked individually to the foremen and foreladies and cautioned them that they could take no part in this activity; they should not talk about it, they should not advise anyone. If an employee asked for their advice they could give them their personal viewpoint, but it should be on the part of the employee that that request was made, that is, that they were the ones that would raise the question, not them, and then, prior to the strike, I don't remember the date, I had a meeting with the foremen and foreladies and told them very definitely that they could not—Reports had come to me that some few had given advice, had been approached and had given advice as to a union. I warned them at that meeting that they positively could enter in no way into the activity and in plain words they were told they must keep their mouths shut.

Q. What did you mean by "keep their mouths shut"?

A. They were not to talk in any way for or against a union. They could take no part in it.

Q. Did you give them any instructions at that meeting about soliciting union members; that is, anybody soliciting union members during company—on company time?

A. I told them that was prohibited. They were there to [fol. 742] see that the work was done and, if they were spending their time soliciting membership in any union, the employee couldn't be on the job; and that was to stop.

Q. Was the instruction the same for the employees' association as it was——

A. It was the same for every employee.

Q. ——as it was for the A. F. of L. union?

A. I don't know that there was any mention of either union. It was simply they were to prohibit the solicitation of membership in any union during working hours.

Q. That was at the last meeting; is that right?

A. That was the last meeting.

Q. Before the strike?

A. Before the strike.

Q. Now, then, after the strike did you have any meeting with the foremen and foreladies; give them any instruction?

A. I did. My meeting was preceded, I believe, by Mr. Heinz—This was after the strike?

Q. Yes.

A. Mr. Heinz very definitely told them that as far as the employees were concerned it was their responsibility to see that every employee was treated just the same as they always had been in the past; there should be no discrimination in any way; the employees had their rights and they had to raise their rights, and they positively could have nothing to do as far as any activity of the employees, except they were to see that the employees did their work, and, as I recollect, he told them in so many words, in a few words, just what I had told them, that they must keep their mouths shut and go ahead about their work just the same as they had prior to the strike or at any time during their work with the company.

Q. Again, what do you mean by "keeping their mouth shut"?

A. They were not to discuss it in any way.

Q. What Mr. Heinz do you refer to?

A. Mr. Howard Heinz.

Q. Then did you communicate with the formen or foreladies after that as to their duties in this respect?

A. I had a similar meeting after that meeting—I have forgotten the date, but it was shortly after the employees came back to work. The majority of them came back to [fol. 743] work on Monday, June 14th, I believe. Some returned to work on Thursday—I have forgotten the date; it was two days after the election. That was June 8th. So that would have been June 10th.

The first to return to work on Thursday were the scrubbers, window cleaners, painters, and I believe, the shipping

department, and the car-unloading department, the object of having the painters and scrubbers, window cleaners back, was to get the factory back in working condition, see that everything was cleaned up, so that on Monday we could start our full operations, and my recollection, on Monday the 14th practically the entire plant started up.

Mr. Bostwick: I believe this is respondent's exhibit 3) (handing to the Reporter).

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 3 for identification.)

By Mr. Bostwick:

Q. I show you now, Mr. Heinrich, a paper marked respondent's exhibit 3, and ask you what that is.

A. That is a letter sent out by me on July 21st to all the foremen and foreladies.

Q. Did that follow or did it precede the meetings to which you refer, which you held after the strike?

A. That followed the meeting. This was on June 21st and, as I recollect, the meeting that I had with the foremen and foreladies after the strike was shortly after they all returned to work. I don't remember the date.

Q. This——

Mr. Kleeb: No objection.

Mr. Bostwick: If the Examiner please, in connection with the testimony of this witness, I offer the exhibit in evidence as respondent's exhibit 3.

Trial Examiner Walsh: It may be received.

Mr. Kleeb: I repeat, no objection. I thought the offer had been made when I made that statement previously.

(Thereupon the document heretofore marked as "Respondent's Exhibit No. 3" for identification was received in evidence.)

By Mr. Bostwick:

Q. Now, what can you say, Mr. Heinrich, about the action [fol. 744] of the strikers during the strike in preventing the maintenance men and other employees from returning to work?

A. On the night of May 24th, or, rather, the morning of May 25th, at about 2 o'clock, I believe it was between 1 and

2 o'clock, the maintenance men reported to the time office to relieve those men that were on duty. I was present in the time office and these men were stopped from coming into the plant.

Mr. Jordan, the chief engineer, was there, and I said, "Well, you had better explain to these men who are in the picket line" who were blockading the doors "the importance of having our maintenance men on the job." I said, "You know, if a fire would break out, someone would have to be responsible to see that the fire pumps operated" and that we also would have to have maintenance men in the plant if the sprinkler lines would let go. Someone would have to be there to look after the maintenance work.

After quite a discussion with some of the men they said, "Well, if they go in, they can't come out."

So we said, "if that's your orders, that's what we will do." And, to my recollection, those few men—I have forgotten just how many there were—were allowed to go in, and they were in during the entire duration of the strike, which was about 15 or 16 days.

Q. During the rest of the strike were all the rest of the employees prohibited from returning?

A. Absolutely, I was——

Q. What about the office employees?

Mr. Kleeb: I would like to place a general objection in the record to this line of inquiry, as to what took place during the strike with reference to picketing and keeping people in and keeping people out, as being irrelevant to the issues, and immaterial.

Mr. Bostwick: We don't expect to take up much time with that. It is more or less historical.

Trial Examiner Walsh: Objection overruled.

By Mr. Bostwick:

Q. Answer the question.

A. I was present that morning, the morning of May 25th, in the time office. The plant was open, ready for operation. The picket line, which had formed some time during the night, was in front of the time office, in fact, so close in front of the time office there wasn't space to get in the doorway. I witnessed four or five people attempting to get in and I must say that under the same circumstances I don't know [fol. 745] what I would have done, but I do know that those

employees were very roughly treated, in fact, one elderly woman was prodded and squeezed and pulled, and finally landed inside the time office some way. I witnessed one forelady having the same experience.

There was another woman had gotten in prior to that. Just how she got in I don't know; I wasn't there. And I believe there was one foreman came in. I noticed that he was very roughly shoved and pushed around on the sidewalk. How he got through the picket line I don't know. He landed inside the time office almost on his ear.

Q. Let's don't take individual cases. Were the employees prevented from returning to work during that strike?

A. Absolutely.

Q. Were the office employees prevented from coming in?

A. Two or three days later the picket line was formed at the office entrance and they were prevented from going into the office the same as the factory.

Q. Were the executives refusd to pass?

A. I understand they were. In fact, I witnessed one of the executives going up to the door. I saw him from the factory, which is directly across the street, and I witnessed him being refused admission to the office by simply someone holding up their arms and saying "You can't go in"; at least, his arms were outstretched, and he couldn't pass, and the picket line was in front of the door.

Q. What can you say in regard to the total number of employees in Andy Vajentic's department?

A. The big majority or quite a number of the employees in Mr. Vajentic's department, bean-baking and bean-sterilizing—some of them had been with Mr. Vajentic quite a number of years, and Mr. Vajentic was instrumental, I believe, in quite a number of them working for him; being of the same nationality, I think it was through his recommendation that they were employed with the Heinz Company. Why he would want that particular nationality, I suppose that it was more easy for him to issue orders to them and supervise their work and see that they carried out their work, but there was a time that, I believe, the big percentage of them were Croatians, and Mr. Vajentic being [fol. 746] Croatian, I believe, that it was through his efforts that a good many of them were employed there.

Q. I asked you, I think, what is about the total number of employees working under him.

A. Well, I would say, offhand, there were about 30 or possibly 40 men.

Q. Now, Vajentic and his men were pretty close together and consulted a good deal with one another about almost everything; didn't they?

A. About what?

Q. Almost everything?

A. Yes, they did. They were rather clannish, I would say, and they seemed to have everything—everything of interest to one seemed to be of interest to another, and Mr. Vajentic was, I believe, very frindly toward each one of them, and I think they took Mr. Vajentics advice on a good many matters pertaining other than to their work.

Q. Did that sometimes involve argument?

A. Quite often.

Q. Now, there has been a good deal of testimony, Mr. Heinrich, about uniforms of the foremen. Is there anything that is a foreman's uniform, which the company prescribes or which is universal?

A. They do not prescribe any kind of uniform to be worn by any employee. They have a choice of buying overalls, white shirts, caps; jackets, either white shirts or white trousers or grey trousers, or the blue-striped overalls and grey jackets or white jackets, or any kind of a cap. Everyone seems to have their choice in what they wear. I know that some of the messenger boys wear the same uniform that I wear. I know that the truck drivers and quite a number of the employees around the plant wear the same kind of a cap I wear.

Q. Is there any such thing as a foreman's uniform?

A. There is not.

Q. Is any employee entitled to buy any particular type of uniform that he wishes?

A. He is.

Q. Now, there was some discussion here by these witnesses as to the discontinuance of the social functions both in the general auditorium and some others, after the strike. Do you know of any reason why the auditorium, for instance, was—the entertainments in the auditorium were discontinued?

A. Well, at noontime it had been the practice to have picture shows, I believe, two or three times a week, for all the [fol. 747] employees who were taking their lunch between

12 and 1, after they had eaten their lunch, would go down to the auditorium.

Well, after the strike and the employees returned to work, I had made the recommendation to the board that I felt we should discontinue those noonday pictures, with the feeling that existed between the employees. I felt there shouldn't be any more gatherings than absolutely necessary of all our employees, on account of that feeling.

Even in the dining room, where they naturally gathered between 12 and 1, I had a feeling that there was a possibility of trouble starting, and I had told the foremen that I particularly wanted them to keep eating at the men's dining room, because I was afraid there would be a possibility of trouble, and, personally, I have kept a very close watch at noontime that there was no disorder.

Now, as far as the auditorium, I felt that if all employees got down there, with the feelings that existed between them, there was a possibility of trouble starting.

Now, as far as the other activities in the dining rooms, as far as the pool tables were concerned, we had three pool tables. There was a gentleman in charge of those tables who, at 1 o'clock, or, I believe, at 2 o'clock, because some of the employees took their lunch hour between 1 and 2, as I remember—he closed the tables at 2 o'clock, and sometimes was not down before 12 o'clock.

Well, after the strike those tables were opened. Now, it's true that the man in charge didn't always get down there the same time every day. He, at times, I guess, would open up before lunch, and other times after 12 o'clock, and sometimes later, and, to my knowledge, he was still doing that, and, all at once, I noticed the tables were not being used.

On one or two occasions he had gotten down there rather late and I believe some of the boys that had been playing got huffed at the idea of not being there to open up on time, and they just refused to play. The tables were left there a day or two, and no one used them, and the covers were put back on the tables and they haven't been used since.

Q. Do you know Mr. Joseph G. Hargrave?

A. Yes, sir.

Q. You have heard some testimony about Mr. Hargrave [fol. 748] here. Is he any executive?

A. No, sir.

Q. Does he have any power to hire or fire anybody?

A. No, sir.

Q. Who is Mr. Vajentic's superior, as a foreman?

A. Mr. Locke; has charge of the entire main building.

Q. As to any dismissals or promotions in that department, who has to make the recommendation to you?

A. Well, Mr. Locke would make the recommendation to me.

Q. Is Mr. Joe Paul a foreman?

A. Joe Paul?

Q. Yes.

A. No, sir.

Q. He has sometimes been referred to here as though it were Powell, P-o-w-e-l-l, hasn't he?

A. Yes, he has. It's P-a-u-l.

Q. What is his business?

A. He is a group leader in the pickle department.

Q. Does he have any right to employe or discharge?

A. No, he has not.

Q. Attended foremen's meetings?

A. No, sir. He——

Q. How is he paid? Is he an hourly workman?

A. Paid—He is an hourly worker.

Mr. Bostwick: Cross-examine.

Cross-examination.

By Mr. Kleeb:

Q. Who is your superior, Mr. Heinrich?

A. Mr. Mueller. He is the head of the manufacturing department; as well as Mr. Shinabarger; and I consider Mr. Mueller and Mr. Shinabarger my superiors; being connected with the manufacturing department.

Q. Mr. Riley, Mr. H. N. Riley, is he a superior of yours?

A. Well, in a sense he is. He is a director of the company and, naturally, I look to any director as a superior, but, directly to my superiors, as far as my work is concerned as superintendent of the plant, I consider Mr. Mueller and Mr. Shinabarger my superiors.

Q. And you have taken orders from them, have you not?

[fol. 749] A. Yes.

Q. You identified as respondent's exhibit 3 this letter of

June 21, 1937, signed by you and addressed to all foremen and foreladies. You say you wrote that letter?

A. I had plenty to do with it; yes, sir.

Q. And who else assisted you in writing that letter?

A. I just don't recollect who did, but it was on my recommendation the letter was written.

Q. And I again ask you who, along with yourself, wrote the letter.

A. Well, I just don't recollect who did. I asked advice of different people, that is, I asked them different questions about it. I might have asked Mr. Shinabarger or I might have asked Mr. Mueller or I might have asked anyone above me.

Q. You might have, or did you?

A. I don't remember that I did or not.

Q. But you do recollect asking others what should go in that letter, do you not?

A. Well, not exactly the thought, no; that was my own idea.

Q. What did you make inquiry about?

A. More or less the wording of it, possibly.

Q. Why did you do that?

A. Because I probably didn't feel capable of writing it the way it could be written; so that it was more understandable to those who were receiving the letter.

Q. Was it only because you didn't feel yourself personally capable of putting the letter in the right language you went to somebody else?

A. That's right.

Q. But the subject matter, the entire thought and everything else, was your own?

A. Yes, sir.

Q. Was this letter approved by Howard Heinz?

A. Not that I know of, no, sir.

Q. Did Mr. Shinabarger or Riley or any other tell you Howard Heinz ever saw the letter before it was given or sent to the foremen?

A. No, sir.

Q. When the letter was finally drafted into form, did you take it to any superior officer, you yourself, for approval in the final draft?

[fol. 750] A. No, I don't know that I did.

Q. Would you say you didn't?

A. I say I don't know that I did.

Q. Was it given to the foremen and foreladies in the factory individually or was it mailed?

A. As I remember, it was mailed. I couldn't say for sure. That is, it was mailed in the sense that the messenger system in the factory——

Q. You are a little hazy about this whole letter?

A. No, I am not hazy about it.

Q. But you don't remember who it was that helped you write it.

A. Well, I don't know that I asked anyone in particular to write it. I did ask some of the men around the office about the exact wording of it. The letter was drafted and I did ask advice on the letter of some of the men around the factory office.

Q. Of course, you wanted to be careful and not put anything in the letter which did not express the policy of the company, didn't you?

A. I wanted to put in the letter how I felt.

Q. Who suggested the idea of a letter?

A. I don't know that there was any suggestion. It wasn't unusual to send out a letter at times.

Q. What I mean is, was the idea of sending this letter of June 21st to foremen and foreladies your own, or did somebody suggest it to you?

A. No, it was my own.

Q. You testified about Frank Novak's conference with you and others on April 19th. You didn't know anything about what Novak was supposed to have done except from reports of Miss Weissman, isn't that a fact?

A. Yes, that's true to a great extent, but I had observed Frank's actions around the factory; I saw him talking to people?

Q. When?

A. What do you mean by "when"?

Q. When did you observe him doing that?

A. Well, for some time.

Q. When with reference to the strike; a month before or two weeks before?

A. Well, I would say possibly over six weeks' time; I don't know exactly, but some time before the strike.

Q. You hadn't observed that four months before, however, had you?

[fol. 751] A. For four months?

Q. You hadn't observed Frank Novak talking among the employees four months before the strike?

A. No, not the way he was doing it then. I don't say Frank Novak never talked to employees, but I never observed Frank Novak having groups of people together and talking in a loud tone of voice like he did prior to the strike.

Q. You observed him doing that during lunch hour, didn't you?

A. Well, I observed him more so, I would say, in the morning.

Q. How many times would you say you observed?

A. I don't know, exactly, how many times I saw him.

Q. What is Fred Heinz, the man that was in this conference on the 19th; that is, at the factory; What kind of a job does he have?

A. Well, Fred is in the superintendent's office. He specializes on being an authority on glass containers, caps, and machinery in the operation of closing machines and filling machines, and he spends a whole lot of his time on glass containers and also on caps and machinery to apply those caps.

Q. Had he any right to remain in this conference while you were talking to an employee?

A. I don't see any reason why he couldn't. There were no secrets there. It was simply a case—he had been in my office time and again about different matters. In fact, his desk is right outside my office, in the next office; that is, it's an office with four or five desks.

Q. It was not unusual, then, for him to be present at this conference with one of the employees?

A. No, it was nothing unusual. He was not always there, but he had been there lots of times pertaining to the work of employees so far as being in the office.

Q. How many times had Frank Novak asked you, since he has worked at the factory, for a better job, or a job that paid more money?

A. Me personally?

Q. Yes.

Q. Yes.

A. Never.

Q. How many times has he asked other persons, to your knowledge?

[fol. 752] A. Never; up until the day I talked to him.

Q. He may have asked other officials or a foreman without your knowledge, might he not?

A. That's possible; yes, he might have, but not to my knowledge, he never did.

Q. You referred, I believe, to your employment record. That is his rate card record, I believe, and you referred to a bundle of cards. From what department is that bundle of cards taken?

A. The cooperage. I think two and three.

Q. Novak was in the cooperage department at the time of this April 19th conference, was he not?

A. I don't know as he was there all the time. He had been working in the cooperage department quite a bit but he also—I know he was out of the cooperage department too. When the work was slack there I do remember he worked around the factory in different places. I can recollect seeing him, possibly, on three or four different jobs. He worked on the 7th floor of the power building and I know he was working in the labor department at times and I believe that he, prior to that time, he worked around different jobs and as far as where he is working at that particular time, I couldn't say he was in the cooperage shop, but I believe he was.

Q. Do you know Ludwig Bogoski in that department?

A. He is not in that same department.

Q. What department is he in.

A. In cooperage one. That's up in the factory and this was on four and five.

Q. What kind of a job does Ludwig Bogoski have in that department?

A. He is a cooper. He looks after the coopering, in a sense, but works with the men in coopering these barrels for the pickle department. It is not like, exactly, the other department, but it's cooperage work. The method of the work is the same, but the particular work he turns out is for the pickle department. He coopers along with the men and is an hourly worker there the same as the rest of the men.

Q. Is he a group leader?

A. He would be considered a group leader, yes.

Q. How do you explain the fact that on April the 16th Frank Novak got 62½ cents an hour and on that same date Ludwig Bogoski was making 77½ cents an hour; why the variance?

[fol. 753] A. If you will refer back there you will find there are other coopers that are getting quite a bit more than Frank Novak because they were——

Q. What's the explanation for the variance between Bogoski and Novak?

A. Because he was an old cooper. You will find there are coopers, older coopers, getting more money. Frank was not considered a first-class cooper.

Q. Isn't it a fact that Bogoski, being a group leader, he gets a few pennies — than the others?

A. No, I wouldn't say that. He is an older employee.

Q. That has nothing to do with it at all?

A. I wouldn't say that, no. He is an old employee.

Q. Answer my question directly. Does the fact Bogoski is a group leader have anything at all to do with the fact he receives more money than other coopers; has that anything at all to do with it?

A. No, I don't believe it has.

Q. Yes or no; does it or doesn't it?

A. I would say no.

Q. You would say no?

A. I know he is an exceptionally good cooper.

Q. Does any other cooper in that department have about the same or longer term of service with the company than Bogoski?

A. Not in his department; not to my knowledge.

Q. In the entire cooperage department?

A. I don't believe there are. It's possible, but, offhand, but at the present time, I couldn't say that there are any that have longer service.

Q. It is a fact that Bogoski is the highest paid cooper; is it not?

A. I couldn't say. You can tell by looking at the cards.

Q. I thought perhaps you knew?

A. Well, I don't know that he is.

Q. Will you look at them; go through them and tell me if you can find anybody higher paid than Bogoski, without reading them, just go over them and read the rates?

A. Here is one that receives 74; here is one receives 82.

Q. I said higher than Bogoski.

A. I will have to get Bogoski's card in order to——

Q. I think I gave you the figures before, didn't I?

Mr. Bostwick: I just heard one mentioned at 82.

[fol. 754] The Witness: Here is one 82½. Offhand I would say the other man don't get any more than that. He might or he might not.

Mr. Bostwick: I think Mr. Bogoski's rate was read to you at 77.

Q. Bogoski is getting now, with the increase that is granted, .853, isn't that a fact?

A. .853, yes.

Q. And he was getting, on the 16th of April up until the 1st of July, is that right?

A. That's right.

Q. From the 16th of April to the first of July, 77½ cents an hour?

A. That's right.

Q. And today, since July 1st, he is getting .853?

A. That's right. He got a 10 per cent increase the same as the rest of the employees on that day, July 1st.

Q. Yes. Let's take the present rate, .853, and point out to me if there is any employee in that department that gets any more than Mr. Bogoski?

A. You say any more? Here is an 82½; 77; here is one that gets 90.

Q. Who is that?

A. Carl Schwartz.

Q. He is also a group leader, is he not?

A. Yes, sir; he is an older employee.

Q. How many years of service, approximately, does Carl Schwartz have?

A. I don't know. I know he has been there a long time.

Q. Do you know how many Bogoski has?

A. I don't know that exactly. I know they are both old employees.

Q. And both group leaders?

A. In a sense they are a group leader, yes, they are also coopers.

Q. Go ahead.

A. Here is a man here that gets 82.5; he is not there as long as the other two men. Here is another one, 82.5. I

think there is another one here but I just don't see it. There is Frank Gaba gets 82.5 and I think that the rest are under those rates.

Q. Can you name other group leaders in that department Besides Bogoski and Schwartz?

A. You mean in this particular department?

Q. Yes, in this group; you have named two of them.

[fol. 755] A. Joe Beljan would be considered that.

Q. Anyone else?

A. Well, anyone of those older employees could serve in the same—do the same work.

Q. Is John Zotter?

A. There are two Zotters. I believe so.

Q. John Zotter is a group leader, is he not?

A. He is of a few, yes; he coopers barrels.

Q. And he gets .825?

A. Yes.

Q. Cents an hour?

A. That's right.

Q. Joe Beljan, you mentioned, is a group leader; he gets .825 an hour?

A. That's right. He is not as old an employee, though, as these other men.

Q. As a general rule, these group leaders are older employees and do get more money, isn't that a fact?

A. Not necessarily. The fact they are an older employee, it might be they get more money on that account because, if they have a set rate and there is an increase, as a rule, they get the same in proportion.

Q. Does the Heinz Company follow a seniority rule in all cases, plant seniority?

A. You mean at the present time?

Q. Before the strike?

A. Who are you referring to, the hourly employees?

Q. Well, let's take the hourly employees.

A. It was the—it's customary to try to always retain the oldest employee if they are capable of doing the work, the job we had for them.

Q. And since the strike——

A. It wasn't always done, but that was the policy, if we could do it.

Q. And since the strike?

A. Since the strike, according to the understanding or agreement, we are following the seniority of the employees,

yes, where they are capable of doing the job. If they are physically able we follow the — and as far as their ability and training, we follow it according to the seniority.

Q. So that the rule now is the same as it was prior to the strike?

A. Well, no; we are living up to the rule a hundred per cent where, as I specified, if they have the ability and [fol. 756] training and are physically able to do the job it's taken according to seniority.

Q. Plant seniority?

A. Departmental.

Q. That was the rule before the strike?

A. No, that was not the rule before the strike. I said we tried to give the older employees work where they were qualified to do it, but it wasn't always true that the oldest employee did stay on the job.

Q. So that because of this labor-relations bulletin that was posted by the company the rule has changed, the seniority rule?

A. Well, we are living up to it according to the agreement.

Q. What is the rule according to agreement? Do you know that?

A. My understanding is that the seniority is departmental and that's the basis we have worked it on.

Q. Have you ever read the labor-relations bulletin?

A. Yes, sir.

Q. Paragraph 4, I call your attention to it; it's Board's exhibit 22; says "Rules governing seniority heretofore in effect shall continue." Is that a fact?

A. That isn't my understanding.

Q. Is that what that says?

A. Yes, that says that. I have read it. After, when the grievance committee started functioning, Mr. Tasker, the business agent, called a meeting with Mr. Riley and some of the members of the grievance committee, or, possibly, all of them, and he was dissatisfied, and Mr. Tasker was dissatisfied the way we had been operating, as far as the seniority ruling, and we got together and there seemed to be a difference of opinion just how the seniority rule should operate. Mr. Tasker thought one thing, Mr. Fitzpatrick and Mr. Gutowski of the grievance committee thought another thing, and they couldn't, at the meeting that time, could not decide which was—just what the understanding

was, and, as I remember, there was some discussion about that. Mr. Riley had some correspondence or some dealings with Mr. Tasker, I believe, and my understanding at the present time is that it's departmental. I remember a meeting some time after the strike when Mr. Kracik and Mr. Riley and some committee—it wasn't the present grievance committee—but there was a committee of some kind. I think one or two of those present were on this—later on the grievance committee, and I remember Mr. Riley asking Mr. [fol. 757] Tasker what his understanding of that agreement there—that is how it's worded in the agreement—what his understanding was, and my recollection is that Mr. Tasker or Mr. Kracik said they wanted it by departments; it was to be departmental, so you can see, there has been a big difference or quite a difference of opinion as to just what that does mean and how it has been functioning since. It has been functioning in this way since, according to my understanding, with the present grievance committee, it's seniority by departments regardless of what the agreement said, and when they refer as previously or prior to the strike I suppose they mean—I don't know just exactly what they refer to, because there was quite a variation in the policy in the past the way it worked—not the policy, but the way it worked.

Q. Wasn't the confusion due to the fact before the strike none of the employees knew just what the rules were?

A. Well, I don't say we had any set rule.

Q. They varied in various departments, didn't they?

A. It varied, of course, according to the man's ability, if he could do the job or not. I told you before that we did try before the strike to give the older employees work, but I don't say that it always worked out that way, because lots of times they didn't fit into another department. We had men in some departments that have been there 25, 30 years that might have been a cooper or might have held some other position, that couldn't go to another department and do that work, so, therefore, seniority didn't mean anything if he couldn't do the job. As I said, that was the policy, of course, we tried to follow where it was practical.

Q. But there were a variety of rules on discharge or on lay-offs, and so forth, at the plant before the strike?

A. Well, the lay-off, if a certain department was slack, of course, that department did lay-off the surplus help, but even there, there was a possibility of some certain man in

that department had some time or other worked in another department, and if that other foreman could use him, he was transferred to that department on account of his training, his ability.

Q. There was no straight seniority rule followed then [fol. 758] before the strike?

A. No.

Q. You testified that in talking with Frank Koontz and John Koontz about their father, that after you heard them talking, that you were sorry that you went to the Board of Directors for their father? Didn't you make such a statement as that?

A. No, no, because I hadn't gone.

Q. I mean since their father got the pension.

A. I have talked to them since their father got the pension, but that was prior to the strike, as I recollect.

Q. And didn't you testify that because they criticized the pension, and so forth, to you, that you were sorry that you had done anything about for their father?

A. No, sir, no, no; I did not.

Q. You didn't say that?

A. I did not say that?

Trial Examiner Walsh: May I interrupt, Mr. Kleeb?

By Trial Examiner Walsh:

Q. The point that is probably referred to by Mr. Kleeb I should like to have cleared up.

Did you say something like this: "Yes; I went to the Board of Directors and recommended the pension for your father, not to do him a favor, but because he deserved it and because I thought you boys would appreciate it, but now from your attitude, I am sorry I did it."

Now, what did you intend by that?

A. I didn't mean it in that way that I was trying to pension their father, because I felt that their father was deserving of a pension. Now, I did feel personally—I felt hurt, I will admit, but I didn't feel that I was sorry that I had asked for a pension for their father, because I had done it in a good many cases for other older employees.

By Mr. Kleeb:

Q. It was the father who earned the pension regardless of what the boys might have thought about it?

A. That is right.

Q. Yes. By the way, with reference to pensioning employees, does that recommendation have to come from you?

A. Well, as a rule, it did. I don't say that it necessarily must come from me, but as a rule, it did come from me. I don't say that it always did, no.

[fol. 759] Q. Well, who is it that determines whether a employee is of sufficient age that that employee should be pensioned?

A. Well, there might be different people that would recommend it.

Q. For example?

A. Well, Mr. Mueller has known a good many of these employees for years, and he might have recommended it, might have asked me about, got my opinion, and he is one case that I know that has happened.

Q. But as a general rule you would be the man who would bring this to the attention of the Board of Directors or your superiors?

A. I wouldn't say that would be the rule, but I do do it.

Q. In your direct testimony, Mr. Heinrich, you related what happened with reference to meetings or conversations with Novak, and Sophie Kos, and Edith Sherbon, and the Koontz boys, and Matt Canjar. All of these conversations occurred sometime in the latter part of April or the first part of May before the strike, didn't they?

A. I don't remember the dates of the particular times, no.

Q. Can't you approximate the time?

A. No, I—How close would you like to have me——

Q. Within say a few weeks.

A. Well, I would say that it was sometime during the spring. I can't tell you the dates, or I can't even tell you the approximate time of the month or what month.

Q. It was before the strike?

A. Yes.

Q. And by spring you mean April and May?

A. Well, I might mean March.

Q. Well, these conversations more or less occurred close together, did they not?

A. You mean the contact I had with the different people?

Q. That is right.

A. No, I don't believe they did. I don't know that they did not. I couldn't give you the date. I haven't any idea,

but I would say that they were not close together. When you refer to close together, I don't know exactly how close you mean.

Q. Well, over a period of a couple of weeks.

[fol. 760] A. Well, it would be very doubtful in my mind that it would be within a period of two weeks' time. I doubt if it was within a period of two weeks' time. I don't know. I couldn't say exactly.

Q. But those occasions that you did speak to these people, you remembered the time of the day very well, didnt' you?

A. I remember one, two, three. I remember the time of the day of most of them, the approximate time of the day.

Q. Why is that? You can't remember the month; you can't remember the week; you can't remember the day; but you can remember the time of the day?

A. Well, that is—I have a particular time when I go through the plant. I cover pretty much the same route, and I know about where I am at certain times. I know not every day, but a good many days I know that I am up probably up in the soup and spaghetti department after lunch; and as far as a particular case of the bean department, I know that that is where it was. Some of these dates or times, of course, has come back to me since I heard this. I didn't remember all of it. I remember talking to Matt on the bridge at quitting time or after quitting time, and, as far as remembering the particular time, my memory has been refreshed from what I have heard.

Q. From the testimony of these people?

A. Yes, but some of—some of the time I do recollect. I remember. I do recollect the case in the spaghetti department at 1:30 or some time around after lunch.

Q. Now, the very nature of your job takes you throughout the entire plant, the entire factory practically; doesn't it?

A. Yes, but not every day.

Q. Oh, no. I mean periodically. But you do make the rounds?

A. That is right.

Q. And you talk to a great number of employees during the course of two weeks, don't you?

A. Sometimes. Sometimes I might talk to a lot, and I sometimes might not. It all depends on just how busy I am, but I will say I will agree with you this: that as long as

I have been with the company, I will admit that I have talked to a good many employees at intervals, no set time, whenever I happen to bump into them. If they have something [fol. 761] to say, I talk to them. If they talked to me, asked me questions, I would try to answer them, and it was nothing unusual, of course, for me to talk to the employees.

Q. During the spring of this year, around in April or May, before the strike, you did find yourself talking an awful lot with employes in general; didn't you?

A. Not any more so than I ever did, not a bit.

Q. There seemed to be a lot more complaints about employees at this time than before?

A. Well, it may be you may have heard of them, yes, but I have complaints from time to time. That is only natural. 2000 people working, there is bound to be complaints, and I have probably settled a lot of them in my time, tried to, at least.

Mr. Kleeb: If the Trial Examiner please, I am ready to go to a new matter, and I think it is about 4:29.

Trial Examiner Walsh: In that case, I think we had better adjourn until tomorrow at ten.

(Thereupon, at 4:25 o'clock p. m., Monday, November 22, 1937, the hearing was adjourned to tomorrow, Tuesday, November 23, 1937, at 10 o'clock a. m.)

The hearing in the above-entitled matter was resumed, pursuant to adjournment on Yesterday, at 10 o'clock a. m.

Before:

J. Raymond Walsh, Trial Examiner.

Appearances:

Robert H. Kleeb on behalf of the National Labor Relations Board.

Earl F. Reed, Esq., Donald W. Ebbert, Esq., and R. G. Bostwick, Esq., of the firm of Thorp, Bostwick, Reed and Armstrong, 2818 Grant Building, Pittsburgh, Pennsylvania, on behalf of the respondent.

Proceedings

Trial Examiner Walsh: The hearings will please come to order.

HOWARD HEINRICH resumed the stand and testified further as follows:

Cross-examination (resumed).

By Mr. Kleeb:

Q. Mr. Heinrich, I would like to develop in the record [fol. 762] a little picture of the management set-up of the production of the plant. According to the stipulation with the company that's in evidence there are approximately 1,894 hourly employees and 689 salaried employees; that includes clerks and everyone else at the Pittsburgh plant. So far as production is concerned, as I understand it, you are superintendent of the production at the plant; is that right?

A. That's right.

Q. And then out of your office there is Charles Heinz, Oscar Hayes, Don Anderson, Fred Heinz, and Mr. Roemer—How do you spell that?

A. R-o-e-m-e-r.

Q. And is Miss Weissman out of your office?

A. No. She is in charge of employment; also has supervision over the girls, in a way. That is, she looks after the girls, in a general way.

Q. So that the men I menti-ned are those who work out of your office?

A. That's right.

Q. Are they classified as assistant superintendents or as foremen?

A. Mr. Charles Heinz is the only assistant superintendent. The other men you refer to are just general foremen on detail work, whatever I might place them on.

Q. Instead of being assigned to a particular department they sort of work throughout the entire plant?

A. That's right. As I explained, Mr. Fred Heinz follows the caps and glass containers; that's mainly his work.

Q. Miss Weissman is not a forelady, is she?

A. No, we would consider her as our employment manager.

Q. Employment of girls or of everyone?

A. Well, everyone.

Q. Then you have foremen throughout the departments besides these I have mentioned, that work out of your office; is that right?

A. The foremen are assigned to departments.

Q. Yes. And you have foreladies, do you not?

A. Yes.

Q. Now, a foreman and a forelady, do they hold about the same position with reference to production?

A. Well, to an extent they do. The forladies have super- [fol. 763] vision, mostly, over the girls' work; that is, directly over, where the foreman is just general of the entire production of the department.

Q. So that in quite a few instances the foreladies are responsible to the foremen?

A. Yes, to a great extent.

Q. Are there some foreladies who have no foremen over them?

A. No, I don't believe we have any such cases now. There might have been, temporarily, a foreman might have been out of the department, but, as a rule, there are foremen.

Q. And then in the various departments or subdivisions of departments under foremen or foreladies you have group leaders who are responsible for a few individuals under them?

A. Well, yes; they do have certain duties, yes.

Q. I mean, that's sort of pyramid production control or supervision you have at the plant?

A. I wouldn't say those particular people are responsible for production. They are more responsible for the quality of the particular job we are doing; not entirely, by any means. Of course, the responsibility, you understand, are the foreladies and foremen.

Q. What I mean is this: The group leaders see that the people, the group under them, are doing their work properly and producing the proper quality of goods; is that right?

A. Of course, they themselves are just as much responsible as the other person, to work along with them.

Q. Yes.

A. They are a part of that crew.

Q. I understand that, but the forelady or foreman holds every group leader responsible for the people's work under him, to see it's properly done?

A. Well, to a certain extent they do. They are right on the job, and it is their business to see that it is done.

Q. Why do you have group leaders?

A. Well, it is only natural that one person may be a little more intelligent than another one, of course, and may be an older—might be a little older employee.

Q. Yes, sir.

A. That is not true in all cases, of course, but that is probably the general rule.

Q. Well, as a matter of fact, isn't the reason because of [fol. 764] almost 2,000 employees in the plant, the size of the H. J. Heinz Company, the number of foremen and foreladies you have, it would be impossible for them to supervise the work of every single individual?

A. No, I wouldn't say that at all.

Q. Why do you have group leaders?

A. Well, that, I would say that a group leader is simply part of that organization in that department as workers, and on account of their intelligence or probably length of service they may be a little better fitted than some other persons.

Q. Better fitted for what?

A. For what the people are doing, what they are doing, what the group is doing.

Q. And why are they classified as group leaders?

A. Well, I thought I explained, on account of their—probably their intelligence or some particular ability, they might be able to do the job just a little better.

Q. All right. Now, tell us, what is their individual responsibility besides their own work.

A. I can probably better explain by citing an example of a checker in a shipping gang. There are four men in a crew. What we would call the group leader is the checker. He, in turn, has the orders to load the cars, that is, he has the copy of the original order to load the cars, for certain kinds of goods, and he keeps track and checks off the orders as it is loaded in the car, and working along with them. Now, he is what you would call a group leader, but he works with the men. He is a little more intelligent, probably a little better able to write, and he keeps a check on the work.

Q. Has more responsibility?

A. Well, he has a little more responsibility, yes, of course. Of course, it is a responsibility of all the men in that crew to see that they load the right kind of goods.

Q. As a general rule, wouldn't you say that the group leader receives more money per hour than the others?

A. He does not, not as a rule. He may, in some cases, if he is an older employee. Of course, if he is an older employee, he, on account of his length of service, may receive a little more money, but it doesn't necessarily hold good that that particular person receives more money, because, in a good many cases, they don't, on account of the [fol. 765] fact that there is an older employee in the gang, and according to the man's ability.

Q. But the outline, as I have just pointed it out to you, is the general production control of the Pittsburgh plant, is it not, from you down to the rank-and-file workers, from the assistant to the foremen and foreladies?

A. They are responsible to me for the production, the quality, the cost, and everything that would go in operating or managing a department.

Q. Are all foremen paid by the month?

A. They are.

Q. Every one of them?

A. With the exception of one man who is a temporary man in our box department. He is only a temporary foreman. There is only about four people—five people—in the department, and he is paid by the hour, due to the resignation of a foreman some time ago. And there really isn't any definite thought of putting him on the monthly payroll. We might. It all depends on how he works out.

Q. With that exception, the rest are monthly paid men?

A. All the rest are monthly.

Q. By the way, what position does Mr. Brooks have? We haven't mentioned him with relation to this set-up at the plant.

A. Well, Mr. Brooks is a foreman. He is in charge of the entire spaghetti and meat-soup department. That is, one branch of the meat-soup department. With him are about one, two, three, three or four other foremen.

Q. He is to that department what Mr. Locke is to the bean building? Would you say that?

A. That is right.

Q. Are there many others who hold jobs similar to Mr. Locke and Mr. Brooks?

A. I wouldn't say there are many others. There are some others.

Q. Will you name some?

A. Well, I don't know of any that would have quite as many men. Possibly in our power building; in another soup department; Mr. Phillips has possibly three.

Q. Foremen?

A. Foremen. And I believe those are the largest departments.

Q. Now, you mentioned the foremen's club. What is that? [fol. 766] A. I didn't mention a foremen's club that I know of.

Q. Foremen's meetings?

A. Foremen's meetings. That is a meeting of the foremen.

Q. And the purpose is what?

A. Just to discuss things in general pertaining to their work.

Q. Are they held at regular intervals or just at call?

A. We have a schedule of twice a month, but they are not always held on schedule.

Q. And you generally take charge of that meeting?

A. Well, I do. Of course, it depends. Sometimes there may be just a subject on safety. Of course, Mr. Reading, who is the safety man, has charge of the meeting.

Q. And Mr. Hayes, in your absence, sometimes takes charge?

A. Charles Heinz, and formerly Mr. Poole, who is no longer in the factory.

Q. Mr. Hayes sometimes takes charge?

A. Mr. Hayes sometimes; whoever happens to be available.

Q. This question of the foremen's dress, uniforms: Now, before this strike, in May of this year, wasn't it a fact that the foremen did wear a particular kind of uniform, as a matter of custom, from those who worked under them.

A. No, they did not, because there is a big variation in what the foremen wore. Some wore all white, some wore white and gray, some wore white and—Well, I wouldn't say it was—it is a tan; and some didn't wear any. One or two still wore overalls, because the nature of their work necessitated having something that didn't soil so easily. But there was no particular uniform that they wore. Anyone could wear anything they wanted to.

Q. Perhaps you misunderstand me. I didn't mean that every foreman before the strike wore the same uniform, but I mean in the various departments didn't the foreman in that department wear a uniform different from the people who worked under him?

A. Not necessarily, no. Some of the people wore the same kind of uniforms.

Q. But I mean as a general practice throughout the plant, wasn't that the case? Aren't you speaking of the exception? [fol. 767] A. No, I am not. I know of any number of foremen that wore different kinds of uniforms always or for a long time. I could go back probably several years.

Q. Different from the people that worked for them, or the same?

A. No, they wore the same.

Q. That is since the strike?

A. Yes, sir; they wear anything they want to wear.

Q. This uniform business, the employees have to buy them themselves, do they not?

A. That is right.

Q. Foremen included?

A. Yes, the foremen buy their own.

Q. The difference is that the foremen get their laundry service free?

A. The foremen have their laundry free, that is right.

Q. And do the group leaders have their laundry free?

A. No, sir, they pay for their own.

Q. And the other people pay for their own?

A. Everybody pays for their own.

Q. Ecept the foremen?

A. Except the foremen.

Q. And those above the foremen?

A. Of course, they buy theirs, but they are laundered for them.

Q. The foremen and above the foremen get their laundry free, anyone who wears a uniform?

A. Well, above the foremen would be myself and Mr. Charles Heinz.

Q. Yes. That is true, isn't it?

A. (No answer.)

Q. Now, the foreladies, how are they paid?

Q. By the month.

Q. Every one of them?

A. I believe they are.

Q. As far as you know, every forelady is paid by the month?

Mr. Bostwick: Answer instead of shaking your head.

Mr. Kleeb: It is "Yes".

Mr. Bostwick: The stenographer can't get it unless you answer.

By Mr. Kleeb:

Q. Are they required to wear a particular type of dress or apron?

A. No, they usually wear white.

[fol. 768] Q. Is that different from what the girls under them wear?

A. I think some of the girls wear the same kind of a uniform.

Q. The hats, are they different?

A. No, the hats are the same.

Q. The girls, foreladies included, buy their own uniforms, do they not?

A. They do.

Q. And the foreladies have laundry free, as do the foremen?

A. I think they do, yes. Of course, quite a few of the hourly employees wearing white uniforms, the uniform is furnished and laundered for them.

Q. Girls, you mean?

A. Those wearing the white. That is right.

Q. What other kinds of uniform beside white is worn?

A. Well, they have a blue.

Q. What distingu---es a white uniform from a blue?

A. Just the color.

Q. I know, but why does one girl wear white and why does one girl wear blue?

A. Well, on certain kinds of work, for instance, in the bottling department, the pickle bottlers wear white and on certain kinds of work they wear white in the spaghetti and macaroni drymaking—in other words, making dry spaghetti and macaroni they wear white and there are quite a number of places where they wear white.

Q. The nature of the job?

A. That's right.

Q. Are there foreladies' meeting- like foremen's meetings?

A. There are.

Q. And are they supposed to be held regularly, like foremen's meetings?

A. They are supposed to be, but they aren't all the time.

Q. Do you take charge of those meetings?

A. Miss Weisman is supposed to take charge. Sometimes I am there and sometimes I am not. Sometimes one of my foreladies might take charge.

Q. You were asked, briefly, on direct examination, to identify Joseph Hargraves. He used to be assistant superintendent, didn't he, prior to the War?

[fol. 769] A. I never heard that he was.

Q. How old a man is Mr. Hargraves, approximately?

A. Oh, probably 52; I don't know exactly.

Q. Before the strike his job was what?

A. As the testimony was given, he was the goodwill man; personnel man.

Q. Does that describe him?

A. That describes him pretty well.

Q. And as personnel man his job consisted of doing what?

A. Maybe the testimony could give you a better idea than I could describe. You heard the testimony of Mr. Novak telling what he did. If that is the opinion of the rest of the employees I can't give you any better description, I guess.

Q. Well, now, Mr. Heinrich, I asked you to describe Mr. Hargraves.

A. All I can say is what would be the duties of a personnel worker.

Q. Well, Mr. Heinrich, do you know what Mr. Hargraves does?

A. Certainly.

Q. Do you know what he was doing before the strike?

A. Yes.

Q. Tell us what.

A. Well, he was interested in all employees, in their welfare. He spent quite a bit of time going to their homes in case of sickness or in case of death. He went to the funerals. If anyone wanted to get their naturalization papers he went with them and I can't just think of all the duties he did as a personnel worker. If I took my time I could probably think of a lot of things.

Q. But that was the kind of thing that he did?

A. Yes.

Q. He was a salaried man before the strike, wasn't he?

A. Yes, always has been, as far as I know.

Q. He has been employed there longer than you have, hasn't he?

A. Yes, sir. I don't know exactly how much longer.

Q. Before the strike he attended foremen's meetings didn't he?

A. At times, yes.

Q. He wasn't denied entrance to the foremen's meetings, was he?

[fol. 770] A. No. I don't know anybody would be denied if they wanted to go. There was nothing taken up there that was secret.

Q. Since the strike Mr. Hargraves is no longer welfare director, is he?

A. I didn't know that his job was changed.

Q. Is he more a foreman in a bottle washing department now?

A. No. He might have looked after the work for a few days if a man was gone for a few days; nothing unusual in that. If a man is away it is not unusual for him to go there temporarily.

Q. Well, in the sickness or absence of a foreman on a job Mr. Heinrich would, you understand, he would fill in as a foreman in a department?

A. Not as a rule.

Q. But he has done it?

A. Yes, he has done it, but we didn't plan on him as being the man. We usually had some other man to take the foreman's place. It all depended how busy we were in the plant.

Q. And as far as you know, he is still welfare director?

A. That's right.

Q. Will you please explain the process of how a person can get a job at Heinz's. Suppose I wanted to get a job in the factory, how would I go about it?

A. Well, if I were you, I would come over to the employment department and have an interview with Miss Weisman or Miss Ferri, possibly, or Mr. McElhone, who are also in the employment department, and after the interview they would possibly ask you to make out an application. There is a possibility if we required some help and they exhausted, had gone through their applications and had picked out those they felt would qualify and if they have exhausted those they might give you a job right away

or you might not hear from them, if you filled out an application, for a month or six months; all depends how much help they required.

Q. That office is in a building called the employment building, isn't it?

A. It's in another department of the employment building.

Q. They have a record of vacancies and quits and deaths and all that sort of thing, don't they?

A. I believe they have, yes.

Q. Could Andy Vajentic take me into his department and say, "Here is a job, Kleeb"?

[fol. 771] A. You mean, come direct from the streets?

Q. Yes.

A. I wouldn't say he could do that now. I remember years ago a foreman did their own hiring.

Q. I am talking about in the last couple of years.

A. He might bring somebody to the employment department and recommend them.

Q. But no foreman could pick a person up from his neighborhood and put him right in his department?

A. He wouldn't put him right into the department. He would have to go through the employment department first.

Q. And the fact the person wanted that individual to work for him doesn't mean that the employment department would give him that job?

A. They might lean that way if they thought the man knew the man that was coming there, was qualified, they might take his recommendation and hire him.

Q. The mere fact the foreman wants this man to work for him doesn't bind the employment office to give that person a job, does it?

A. It doesn't bind them, but it might have quite a bit of influence to get the person the job.

Q. And so your foremen can't hire outright?

A. Not at the present time; they can recommend.

Q. Yes, surely. Let's get into this question of discharges. A person is to be discharged from the department. What's the mechanics of discharging a person as it is practiced at the present time?

A. If the foreman has someone he feels either has broken a rule or is not properly doing his work or for whatever cause, just cause, there may be for discharging that man, the foreman recommends the discharge, he makes out a form

we have for the employment department on the payroll department in order to get his pay. It's usually discussed with me before that takes place. I don't say it always is, but that is pretty much the rule, and the employment or the payroll department will not put the pay through for the man unless I o. k. it.

Q. Do you generally have a hearing with the employees present and the foreman present to discuss the reasons?

A. Sometimes two or three.

Q. Yes. So that you hear both sides of it?

A. I, as a rule, try to see the man alone. Of course, I get the foreman's report. As a rule, I try to see the man alone; [fol. 772] let him tell me his story and then get them together.

Q. And then you come to a conclusion on the facts as you have heard them, is that right?

A. Yes.

Q. And you notify the payroll department?

A. Well, I simply o. k. it. The procedure is to send it to the employment and they, in turn, send it to the payroll.

Q. You ultimately are the ultimate say of the reasons for a man being dischargely or the reasons he is not to be discharged?

A. Yes.

Q. That's the general practice?

A. That's the practice.

Q. This question of Matt Canjar's pay was raised on direct examination of you and in his testimony—I am not clear on it and perhaps it can become clear. My understanding is this: That before the strike Matt Canjar and others received a minimum daily wage per hour; a minimum per hour wage; did they not?

A. I believe that they were guaranteed that, if I am not mistaken.

Q. Yes.

A. The particular jobs they were on, some of them.

Q. Some of them; not all the employees, but men like Canjar?

A. I think he was.

Q. If he, before this strike, in the day's work did enough piece work to go above that minimum hourly rate he would get the increase, would he not?

A. You mean daily?

Q. Yes, daily.

A. I believe in his case at least that is Matt's argument now, and he may be right; that is possible; I don't just recollect in that particular work that he did, but I think he did. I know it wasn't the rule all over the plant.

Q. So that if the minimum hourly rate were 50 cents an hour and including piece work he averaged, let's say 60 cents an hour, he would get 60 cents an hour for the day?

A. That's right.

Q. However, if in his piece work rate he made 40 cents an hour, he would get 50 cents an hour because that was the minimum day rate, is that right?

[fol. 773] A. In other words, he was guaranteed his day work rate.

Q. Yes. And that was on a daily basis?

A. I think it was in Matts case.

Q. Since the strike that is not being done, is it?

A. No.

Q. His wage is being pro-rated over a pay period, isnt it?

A. Pay period, providing he is on the same operation during that period. If he is on two piece work operations during that period he is average on each operation. If he is on a ten-day pay and he was on a certain job for four days the earnings are averaged for the four days. If he is on another job for six days it is averaged for that period. In other words, it is averaged for the payroll period providing he is on the same operation for the entire payroll, but if he is on different operations it's averaged for that operation.

Q. Let's assume he was on the same operation for the payroll period. Why the change?

A. It's my understanding that was the agreement and I had a talk with Matt and the grievance committee and they understood it that way and they convinced Matt that was right. I know Matt isn't satisfied, but the grievance committee agreed that was the basis of pay, or method of paying.

Q. It was your understanding that the change was due to the understanding reached with the union and the company, is that right?

A. That's correct.

Q. You didn't cause the change to go into effect, did you?

A. I did not.

Q. You testified on direct to some occurrence before the strike and after the strike. Exactly when did you observe production falling off before the strike?

A. Well, three or four months before, I would say. At least very noticeably two months before. That was intermittent. The departments, one would show more than another. Some were barely up to their average and some were near their average where others were tapering off.

Q. That would be about March of this year you observed that?

A. Well, March, April, May; I would say yes, possibly [fol. 774] March.

Q. Is March ordinarily a seasonal period in the plant where productions do slow up?

A. As far as seasonal, you might say we had a seasonal period a good many times of the year. It all depends. This particular time of the year you might consider it a seasonal period on some of the soups.

Q. In your experience as superintendent, is March that kind of a seasonal period where production would diminish or fall off?

A. No, I don't think it is. March is usually a pretty busy month.

Q. And to what did you attribute this falling off of production?

A. More the lack of interest in their work due to the activity—of the confusion, I would say, of who was joining a union and who is not joining a union and just the unrest, I would say; threatening strikes, some of them approached me and said they wanted work and needed work and didn't want to strike, they needed the money.

Q. And this was March, 1937?

A. I wouldn't say just March; probably more so in April. I can't just recollect that March was particularly that way, but I know April was and May.

Q. So the falling off was three months before the strike?

A. I didn't say it was, necessarily, three months. I don't know exactly what it was, but I know in April and May was noticeable.

Q. Can you recall whether it was noticeable in March or not?

A. No, I don't know that I noticed it in March in particular. I was not particularly interested until it got so noticeable that it was noticeable and I would say that was April or May.

Q. So in January, February, and March, you didn't observe any falling off in production?

A. No.

Mr. Bostwick: He didn't testify a decrease in production, he testified a decrease in efficiency.

Mr. Kleeb: I believe the record would show the production fell off.

The Witness: Naturally there would be a decrease in production if there were a decrease in efficiency.

[fol. 775] Q. You attribute the falling off of production because of the decrease in efficiency, don't you?

A. Yes, if you——

Q. And you blame the decrease in efficiency because of unionism, don't you?

A. I believe that had plenty to do with it.

Q. How do you know that?

A. When a person is wasting his time and leaving their job, talking, and taking time, even on the job and detracting from their work, I would say they were losing their efficiency, and, naturally, affecting production.

Q. You knew they were talking about unions, didn't you?

A. I knew in lots of cases that, yes, because they would come and tell me that.

Q. Because they were leaving their jobs and talking unions?

A. No, they wouldn't admit that, but they would admit they were while they were on the job and the work was held up.

Q. They came to you and admitted they were talking about unions on the job?

A. Some of them would ask me about the union. I think I testified yesterday where a particular girl wanted to know what this talk was about strikes and unions and she said, "We are all upset" and that particular place showed a decrease in efficiency.

Q. Exactly when did you talk to the foremen and the foreladies before the strike about unions and tell them what to do and what not to do?

A. I think the meeting of all of them was about a week or so before the strike. I would say it was about a week before. As far as talking to them individually, I talked to quite a number of them sometime before that.

Q. You called this meeting because you had heard from various sources that your foremen and foreladies were talking union among their men and women in their departments?

A. Mr. Riley had such a report and he reported to me and I immediately took steps to try to stop it which I think I did.

Q. It was because of learning that these foremen and foreladies were talking unions in their departments that you called this meeting?

A. Yes; Mr. Riley said there was a report to him that the [fol. 776] foremen and foreladies, some of them, had been talking, and that's the reason we called them together and told them they could have nothing to do with it in any way.

Q. And that meeting was, I think you said, about a week before?

A. I think it was about a week; I don't remember the exact time.

Q. I believe you testified you told these foremen and foreladies they were not to talk unions or solicit membership during working hours?

A. I don't know that I testified that they shouldn't solicit membership.

Q. What did you tell them?

A. I told them they could play no part in it in any way.

Q. During working hours?

A. Or any time, for that matter.

Q. Or any time?

A. Or any time. Now, if they were approached by an employee and asked their opinion they were, at that time, were not to give any opinion. Prior to that, I think some of them might have.

Q. And after the strike, I believe you testified that you again, following a speech of Howard Heinz, spoke to the foremen and foreladies?

A. Following that was the letter.

Q. And following that was this letter of June 21st?

A. Yes.

Q. Mr. Heinrich, isn't it a fact that after the strike and after the election and after the plant resumed operations that the Heinz Company put beds in the factory in anticipation of another strike?

A. I don't know the date that the beds were put in. I would have to check back. I haven't the slightest idea when it was. We have always had beds—on account of floods—we have wanted places to sleep and as far as those beds, I think that the company—that they can be very well used in time of

the flood because we stay in the plant when we have a flood, as a rule.

Q. Weren't there quite a few beds brought into the factory during this labor trouble?

A. You say "during"?

Q. Well, you said you don't remember. I would like to know when.

A. I don't remember. I don't remember just when those [fol. 777] beds were brought in. If you want me to admit it was before the strike, right now I couldn't say right for sure.

Q. I don't want you to admit anything but the fact.

A. I don't really know, but it was possibly afterward, but I couldn't say definitely, because we had beds before.

Q. Did you personally order the beds to be brought in?

A. I did not.

Q. Do you know who brought about that fact?

A. No, I really don't.

Q. Do you know, when they were brought in, what the purpose of them were, at the time they were brought in?

A. Well, I know in my own mind.

Mr. Bostwick: If the Examiner please, I don't believe this is cross examination, but I don't wish to limit it except to say that I don't think it ought to be pursued.

Trial Examiner Walsh: Objection sustained.

By Mr. Kleeb:

Q. Mr. Heinrich, didn't the Heinz Company put in the auditorium and the organ and the social activities all for the benefit of their employees and to satisfy them and make them enjoy their work, and things of that sort? Isn't that the reason for all that?

A. Well, I would naturally think that those things would be for the benefit of the employees.

Q. To bring them together, to associate together; isn't that a fact?

A. Oh, I don't know in particular about the association. I would say that as much for the pleasure of the employees to have an auditorium and to have picture shows and entertainments for their pleasure. I don't know that it was necessary to bring them together. I wouldn't say that. It might have been.

Q. Yet you thought a strike sufficient reason for curtailing the social activities which the company had given their employees for years, didn't you?

A. If you were to be in the position that I was in, I believe that you would have agreed with me that that was—I had curtailed it at least for some time until there was a better feeling than existed among the employees, and I certainly wouldn't recommend the gathering of those employees with that feeling. As I testified yesterday, we have [fol. 778] a dining room, and I have the same fear there, but it is absolutely necessary to have a dining room there. They must eat, or have some place to eat.

Q. Don't you think that programs and plays and shows would be conducive to creating harmony again, rather than lack of harmony?

A. I don't know that it would. I believe there is quite a number that I have talked to, and I have heard it testified that it isn't the wish of the employees to have those things now.

Q. Well, of course, that is what you heard in the testimony.

A. I have heard that direct from, for instance, the grievance committee.

Q. But you gave some testimony about the pool tables, and you said that since the strike because the manager of the pool tables had such an uneven schedule, at such odd times, that the men got huffed about it and wouldn't play, and, therefore, the pool tables were covered up; something of that sort, didn't you?

A. That was my observation, yes.

Q. Yes.

A. I know that the tables were not being used.

Q. Prior to the strike was the schedule of the manager who manages these pool tables just as unevven and at such odd hours?

A. I really don't know how regular he was at it, because I wasn't down there, as a rule, until some time after 12 o'clock at any time.

Q. Did you observe before the strike if the pool tables were being used?

A. Yes, they were being used before the strike.

Q. And you didn't hear anybody being huffed about it before the strike; did you? Huffed about the schedule?

A. What?

Q. You heard nobody being huffed about the schedule of pool tables before the strike?

A. There might have been, at times. I don't know just when the man opened up the pool tables. There might have been—I will say that they played pool on it. If the same ones played every day, I don't know.

Q. You saw no necessity for covering them up before the strike, did you?

A. No, because they were being used.

Q. But, since the strike, the schedule was uneven, and [fol. 779] they got huffed ab-ut it and they didn't play, so you covered them up?

A. I just take for granted they did. I don't know why they quit.

Q. Yes.

A. But I do know that they quit using them, and they were covered up.

Q. Well, did you make it a point to observe whether they were using the pool tables more after the strike than you did before the strike?

A. No, I didn't observe that they were or were not using them any more. I know they were using them.

Q. The company had what was known or is known as the 57 Club, a social club for the employees?

A. Yes, sir.

Q. A 57 Club for men and a 57 Club for women?

A. That is right.

Q. That activity has been ended, hasn't it?

A. For the same reason that the activity in the auditorium—I don't believe it is wise to have a gathering of employees with the feeling that does exist.

Q. But it has been terminated?

A. Well, there hasn't been any since the strike.

Q. Yes, that is what I mean, since the strike.

A. That is right.

Q. Isn't it a fact that the Heinz Company also published what was known as the 57 News and distributed it among its employees free, a little magazine about six or seven or eight pages?

A. There was such a publication.

Q. Before the strike?

A. Yes, some time. I don't know just how long, but it has been a publication.

Q. And, since the strike, that publication has been terminated; has it not?

A. I haven't seen any.

Q. Well, now, it has been terminated?

A. I don't know. I know I haven't seen any.

Q. If it had been published since the strike you would have seen it, wouldn't you?

A. Well, I think I would, yes.

Q. As far as you know, it is not being published?

A. As far as I know, it is not being published.

Q. Isn't it a fact that the company supplied current magazines and newspapers to the employees to read at their [fol. 780] leisure, before the strike?

A. I have heard that testimony, and I had to stop and think that we did that. Briefly, I can tell you how that happened. Some of the men in a certain department had magazines, to be specific, being the electrical department. They had magazines down there pertaining to their work. One of the men, the gathering that they had in their department, suggested that we have some magazines up in the dining room. They asked me.

I said, "It is all right with me. You can have them up there if you care to."

As I understand, some of the different foremen who had magazines at home, some of the different workers who had magazines at home, brought them in there. We didn't supply them in any way. We had nothing to do with it, in the sense of the company. And, as far as being very widely read, I don't believe that they were read very much. They were scattered around in places and very seldom did I see anyone reading them. But the management didn't have anything to do with it except they did give them permission to put them in there if they wanted to bring in magazines from home.

Q. Has that permission been denied since the strike?

A. No; as far as I know the magazines are still there. I haven't stopped it.

Q. Do you know William Ubrey? Known as Buck Ubrey?

A. Yes, sir.

Q. Do you know John Ubrey?

A. Yes, sir.

Q. They are brothers, aren't they?

A. They are brothers.

Q. Both are old men, are they not?

A. You mean old in the service or old in years?

Q. Old in service. I don't mean old in years.

A. They are old in the service. I believe—I know one of them is. I don't know much about the other one.

Q. Can you give us the approximate years of service of Buck Ubrey?

A. No, I cannot. I think he worked for the company twice. I may be wrong on that, but I believe he has.

[fol. 781] Q. What about John?

A. Well, John, I would say, has been in the company 25 or 30 years. I know he has been there at least 25 and possibly more.

Q. What would you estimate the ages of each of these two men to be?

A. Well, I would say one was about 45. I don't know which is the older of the two. I would say they are both between 40 and 50 years of age. I don't know exactly. I would be just guessing. One of them is probably 45 and the other one probably 47 or 48.

Mr. Kleeb: That is all.

Redirect examination.

By Mr. Bostwick:

Q. I show you, Mr. Heinrich, Board's exhibit 22, which is the bulletin concerning the agreement which was published, and with regard to Mat Canjar's pay, I call your attention to the sub-paragraph under paragraph 1, wages, which begins:

"Pieceworkers are guaranteed their minimum hourly rate on each specific piecework job per payroll period."

Is that the language of the agreement with the union to which you referred, which——

A. It is.

Q. —brought about the averaging of Mr. Canjar's wages?

A. That is right.

Q. Over the payroll period?

A. That is correct.

Mr. Bostwick: That is all, Mr. Heinrich.

Trial Examiner Walsh: You may be excused.

(Witness excused.)

Mr. Bostwick: Miss Weizmann, please.

LILLIAN WEIZMANN, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bostwick:

Q. Your name is Lillian Weizmann?

A. Lillian Weizmann.

[fol. 782] Q. You are employed by the H. J. Heinz Company?

A. I am.

Q. What capacity?

A. Employment manager and general supervisor of girls in the factory.

Q. You have heard the testimony of Frank Novak, I believe?

A. I did.

Q. Concerning particularly the meeting which he said was held on April 19th, at which he said that you and Mr. Hayes, Mr. F. C. Heinz, and Mr. Koehrer were present, in addition to Mr. Novak and Mr. Heinrich? I ask you whether or not Mr. Hayes was present at that meeting.

A. Mr. Hayes was not present at the meeting.

Q. You and the other persons I have mentioned, I believe, were present?

A. We were.

Q. What do you know about what brought about that meeting?

A. My complaint to Mr. Heinrich that Frank Novak was threatening the girls principally in the mixed-pickle department, and I had gone to Mr. Heinrich earlier in the day and complained to him, and after my first meeting with him he said that he was busy now but that he would see me later.

Q. That is Mr. Heinrich?

A. That is Mr. Heinrich; that is right.

Q. Did you tell Mr. Heinrich what it was reported to you that Frank Novak was threatening the girls about?

A. About joining the union, the A. F. of L. union.

Q. And what did he threaten? That is, what did he threaten in general?

A. Well, about the things that would happen to them if they didn't join.

Q. All right. Now, then, your conversation with Mr. Heinrich at the meeting, please. Will you tell us what happened?

A. At the meeting? My conversation with Mr. Heinrich?

Q. Yes, that brought about the meeting.

A. The meeting with Mr. Novak, you mean, prior to him —prior to Novak coming in?

Q. Yes.

A. Well, I came to Mr. Heinrich's office and told him that it has been reported to me that Frank Novak is going [fol. 783] around the plant and threatening the girls, and, specifically, in the mixed-pickle department. The desk girl had mentioned about Frank being in the department, and it was a result of that complaint that Mr. Heinrich, I believe, sent Mr. Hayes to call Frank Novak.

Q. Now, were you there when the meeting began?

A. I was.

Q. Will you tell us what happened, what you heard?

A. Well, as I recall it, after a sort of a preliminary, which was to the effect, when Frank came into the office, was, "Where are you working today?" or something to that effect, something that was rather general, why, Frank immediately said, "Let's get down to facts."

He said, "You want to talk about the union."

Mr. Heinrich said, "Very well, we will get to the point." He said, "what right have you to threaten the girls?"

And he said, "Oh, I am not threatening them," which was Frank's way.

Well, from then on things—I believe Mr. Heinrich said to him, "How long have you worked here, and what departments have you worked in?"

And Mr. Fred Heinz said something to him about his career as a boxer. I think the time of Frank's leaving us was mentioned and the time of his return, and the fact that Frank certainly must have liked it here, otherwise he wouldn't have come back.

And I think at that particular point Frank Novak spoke about—Or not Frank Novak. Fred Heinz spoke about his boxing career, and so on, and then Mr. Heinrich, I believe, said to him, "Well, what is the matter with you, Frank?" or something to that effect, as I recall it.

And Frank said, "Well, I have just never had much of a chance."

Mr. Heinrich said, "Well, what do you mean by a chance?"

He said, "Well, I have never had any change of work."

Mr. Heinrich says, "Did you ever say anything to Mr. Koehrer, or your foreman?"

"No."

"Have you ever said anything to me?"

"No."

"Well, then, how in the world can we do anything for you, if you have never asked?"

So, from then on, Mr. Heinrich talked of various things. [fol. 784] He asked him whether or not—I believe the conversation was to the effect that "A fellow of your size and physique should be doing some other work or could be doing some other work. You could be working up to something in the boiler room, in the machine shop, or in the millwright shop."

And when Mr. Heinrich mentioned "millwright" there was—Frank's face lighted up, and he said, "Well," he said, "now, there," he says, "I have tools at home," and he says, "I frequently putter around at home." And he said, "That seems to be the thing that would please me."

Well, Mr. Heinrich said then, "Well, if we have an opening in the shop now, I will call Dave Simpson" who is the foreman "and we will give you the opportunity."

I believe he called Dave, although I wouldn't say for sure that he called Dave that afternoon. At any rate, the understanding was that Frank was to come up the next morning and Mr. Simpson would be there to receive him and take him down to his department.

And I think there was some such a remark passed as, "If you do the right thing, Frank, the older men, like Mr. Muska" mentioning him by name "will be glad to help you."

Q. That is the right thing, to do the job?

A. Yes, and that is what I mean.

Q. Now, I think when Mr. John Koontz was on the stand he testified about a conversation he had with Mr. Heinrich and in Mr. Heinrich's office. I am not sure, but I think he said the date was some time in April, probably the 23rd, when his father's pension and a better job were discussed with Mr. John Koontz.

Q. Were you present at that meeting?

A. Yes, I was.

Q. What was the conversation which you heard between Mr. Koontz and Mr. Heinrich on that occasion?

A. The conversation that I remember was mainly about Frank Koontz, who is Mr. Koontz, Sr., John's father's pension. I believe that Frank Koontz, Sr., was making his home with John Koontz, and that the boys rather felt, meaning John and his brother Frank, and so on, that probably the father could have worked a litte longer, and that the pension was inadequate.

That seems to be my recollection of that particular conversation, that particular meeting.

Q. Was there any discussion of unions and, if so, who brought it up?

[fol. 785] A. Well, any discussions of unions that were brought up were brought up by John himself. That part of the meeting is rather hazy to me. My purpose in the office was a general one at that particular time. I wasn't—I was just present at this particular meeting, so that I didn't pay very much attention to the rest of the proceedings.

Q. You don't remember the union discussion?

A. I remember that John, I believe, for some time had felt that because of the union, as he always brought up, his chances would probably be lessened, or something to that effect, although that it something I don't remember very clearly.

Q. Do you remember what Mr. Heinrich said to him about that?

A. Well, I know the answer that Mr. Heinrich has given everyone.

Q. No, but I am asking for that answer.

A. That particular answer? No, I can't say definitely.

Mr. Bostwick: Cross-examine.

Cross-examination.

By Mr. Kleeb:

Q. You have testified as to all that took place at that meeting with Frank Novak?

A. Yes.

Q. About you and Mr. Heinz, and so forth, have you not?

A. Yes.

Mr. Kleeb: That is all.

Trial Examiner Walsh: You are excused.

(Witness excused.)

Mr. Reed: Mr. Locke.

RAYMOND LOCKE, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. You are Raymond Locke?

A. Yes.

Q. Where do you live, Mr. Locke? Where do you live?

A. 835 Academy Place.

[fol. 786] Q. You work for the Heinz Company?

A. I do.

Q. What is your job?

A. I have charge of the bean building.

Q. Under whom do you work? Who is your superior?

A. Mr. Heinrich.

Q. Do you have various foremen under you?

A. I do.

Q. Is Mr. Vajentic one of them?

A. Yes.

Q. What department does Mr. Vajentic have?

A. Mr. Vajentic has charge of the bean-packing and bean-sterilizing.

Q. About how many employees does he have in that department?

A. 43.

Q. Now, there was some testimony here about a man named Maternick, that you came into his department one day. Do you know Maternick?

A. I do.

Q. That you came into his department one day and gave to Frank Muskon, or Muska, a petition for the Heinz Employees' Association membership, that you had some conversation with Muskon about circulating that petition.

Will you state whether or not that is a fact?

A. It is not a fact.

Q. Did you ever have a petition of the Heinz Employees' Association to deliver to anyone or to hand any employees?

A. I never handed a petition to anyone. I only had one of those in my hand at one time, and that was right after the flood. One of my own boys came up and asked me about this. He said, "What should I do about this?"

And I said, "Well, I don't know anything about it. That is up to you." And gave it right back to him.

Q. Was that the first information you had about the Heinz Employees' Association?

A. That is true.

Q. Had you ever heard about it before?

A. No, sir.

Q. Do you remember who it was that handed you that?

A. Matthew Curl.

Q. Curl?

[fol. 787] A. C-u-r-l.

Q. Was there any paper that you might have been handed, or handed to Muskon? Do you know of any incident of that kind?

A. I know of the incident that he is talking about, that I was up there, but I never handed him any paper of any kind.

Q. Would you have been likely to have had any paper in your hand?

A. I frequently have a notebook in my hand, figuring up the number of beans that we have run up to that time, or that we will run from then on.

Q. Now, Maternick also testified that you made a statement as follows: "I hear that you are one of these bolsheviks." Did you ever make that statement to him?

A. No, sir.

Q. Or to anyone else?

A. No, sir.

Q. There was testimony here that you called together certain girls in one of the departments and had a talk with them in April or near the end of April, 1937. Is that a fact?

A. Yes, sir.

Q. Will you tell the circumstances there and why you called that meeting?

A. Well, about that time there was a lot of agitation and a lot of reports about people being threatened with one thing and another, and we knew, although I personally had never seen it being circulated, that there were petitions

being circulated for the A. F. of L. union and for the Heinz Employees' Association.

And it was reported to me that this petition which was being circulated for the Heinz Employees' Association had been taken from one of the girls and disappeared. And I thought that that was not fair, because a number of girls had already signed that petition, I had been told, and I felt that it was unjust that their wishes as they had expressed them by signing should be defeated by taking the petition and destroying it.

So I called a meeting at 10 minutes to 1 on April 30th, just to tell them that no law had ever been passed that permitted people to steal, and that I was there to protect their rights, no matter which side they wanted to belong to, whether it was the American Federation of Labor or the employees [fol. 788] association. That wasn't any of my business.

Q. How many girls were at that meeting, in your opinion?

A. I would say about 24 girls. There were probably five or six fellows.

Q. Now, where was that meeting?

A. It was on the third floor of the bean-packing department, right by the desk.

Q. I believe you wrote out what you were going to say that day?

A. I wrote it out, and I said exactly what was written on my paper, with the exception of the preface, that I said that I seldom gave a talk by reading it from a paper, but in this particular instance I didn't want to be misquoted or misunderstood.

And just about that time, why, Frank Novak came through, hollering, "It is unconstitutional. It is unconstitutional", before I had even opened my mouth about what I was going to say.

Q. What did you say to him?

A. Well, Katy Gable is the forelady in the bean-packing department. She happened to be—she was there as the forelady, and she said, "Frank Novak, this is a meeting for the employees of the bean-packing department, and you are not wanted here."

And Frank started to walk over.

I said, "Well, Frank, we will invite you to this meeting if you want to be here and want to hear what we have got to say."

And at that Frank turned around and walked out. He didn't stay for the meeting.

Q. Now, these remarks that you wrote out, that was your own idea, was it?

A. Yes, sir; I went up, composed that at my desk before lunch.

Q. Did you show those remarks to any other executive?

A. No, sir.

Q. Did you ask anybody's approval of them at all?

A. No, sir; I wrote those out myself.

Q. Do you have them in your own handwriting?

A. Yes, sir.

Q. Do you have the paper you read from?

A. Yes, sir.

[fol. 789] Q. Will you produce it?

(The witness produces the paper referred to.)

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 4 for identification.)

By Mr. Reed:

Q. The paper you have just handed me has been marked Respondent's Exhibit No. 4. Is that the original paper that you wrote yourself?

A. That is the original draft, and there are a number of things that have been crossed out there and added which I did as I went over it before I gave the speech.

Q. Well, it looks to me like we will have to ask you to read it to us.

A. Well, I will admit Mr. Heinrich has accused me of being a very poor writer.

Q. Well, just read it.

A. This is the talk as I gave it with the exception of the preliminary remarks to the effect that I don't like to give talks by reading from papers.

Mr. Kleeb: If the Trial Examiner please, I don't know whether this writing consists of hieroglyphics or not. However, rather than clutter up the record with seven or eight pages of that exhibit, if you feel that it is legible enough to be an exhibit, I wish to object to the reading of the entire speech into the record. If you feel that it should be read, I have no objection. However, I do object——

Trial Examiner Walsh: How long will it take you, Mr. Witness?

The Witness: About three minutes, possibly less.

Trial Examiner Walsh: I think you better have it read so we will have it perfectly clear.

A. "I understand that yesterday the petition"——

Q. Don't read it fast.

Trial Examiner Walsh: Talk slowly.

The Witness: Maybe it will take me three and a half minutes then.

A. (Continuing:) "I understand that yesterday the petition most of you signed expressing willingness to join the Heinz Employees Association was stolen. This, I consider, to have been an act of direct opposition to the wishes of you people as expressed by your signatures. I just want to take this opportunity to tell you that whatever your wishes are, they will be protected, whether you want to [fol. 790] join the Heinz Employees Association or the American Federation of Labor, which some of the men here are interested in.

"No law has ever been passed giving anyone the right to steal, to threaten either bodily or property violence or threaten loss of a job. I will personally do all I can to protect each one of you and assure you of your rights to express your wishes in a peaceful way. These are rights which we all have as citizens of the United States of America.

"In the last few days rumors of all kinds—I have heard rumors of all kinds."—No. "You have heard rumors of all kinds. I have heard a few also. You all know that rumors of any kind are not reliable and often are in direct contradiction to the truth.

"Now, I want to tell you a few things that are true. Understand, I am speaking now only as an individual and not as a representative of the H. J. Heinz Company. Among other rumors I have heard it said that if the Employees Association gains a majority of members, that wages will be cut. Now, that is not true. You all know that with the return of good times, wages have been raised, this over the past two years. Now, your wages and mine depend largely on how profitable the business is. If times continue good, I have no doubt that wages will continue to advance.

"Other rumors and threats have been circulated in attempts to intimidate you and coerce you into doing some-

thing your better judgment does not sanction. Many of these are deliberate lies told deliberately to influence you. All I have to say is weigh in your own minds whatever you hear, pick out the truth, and cling to it, believe it and be willing to defend it.

"Getting back now to the paper which was stolen, I think it only fair that you should all be again given the opportunity to show that you want to join the Association of Employees. Marie Ball is here with a paper, and all of you that signed before, may now sign again in perfect confidence that you will be protected in your right to express your opinions as you see fit. Any of you who did not sign may also sign at this time, if you wish. Also, if there are any who wish to join the American Federation of Labor or any other union, I want to assure you that I offer the same personal protection to them. You all have a right to do as you see fit in joining any organization. If there are any who want to join the American Federation of Labor, I am sure [fol. 791] there are men who will take care of them and see that they get signed up. Those who want to back the Heinz Employees Association as they did yesterday can step up to the desk and sign the slip."

By Mr. Reed:

Q. Now, that is all that you said, is it?

A. That is all.

Q. Now, I believe one of the girls had a petition there on her desk, didn't she?

A. That is right. She was one of the girls in the group, and she stepped out of the group and went to the desk with this petition.

Q. Now, it was testified that you stood there to see who was signing; is that true?

A. No, sir, I was in the vicinity there, but I didn't stay around, and I don't know who signed. I didn't see who signed and I never did know who did and—or who didn't sign.

Q. Had there been trouble in that department prior to this?

A. Well, there had been trouble because there were one or two men there who were particularly strong in their attempts to press the girls into the signing the slips for the American Federation of Labor, and there seemed to be

quite a bit of opposition among the girls to doing what these men wanted them to do.

Q. A witness named Lukans testified. Do you know him?

A. Victor Lukans.

Q. Who said that he was given a new job in a different department a few weeks ago. What are the facts about that?

A. Well, Victor Lukans has worked in the bean packing department for all of the time since he had worked with the company, which I believe is about 18 years. Victor started as a basket pusher. Some years ago Victor was made a mechanic in the department. Now, that was before I came into the bean department, so I don't know how many years ago that was, but at the time I was first connected with the bean packing department, Victor was the mechanic. And at that time the bean packing department took in all of the labelling or all of the soup operations as well as the bean operations, and everything that was filled in the whole plant was labelled by the bean packing department, so that our operations extended from one end of the plant [fol. 792] to the other.

We had tomato juice in one end of the plant, and sometimes we would have tomato soup in the other end of the plant. We had work in the shipping building and sometimes even in the spaghetti building. At that time the bean packing department extended all over the plant.

Well, with the development of the soups, the bean packing department has gradually been encompassed into the area of two floors in one building, and with that we have had less and less mechanical work to do. Well, for a good many years, oh, in fact, as long as I have known anything about Victor, he has been a very unsatisfactory worker. He does what you ask him to do, sometimes grumbling, and very often when the girls ask him to do something, why, he absolutely refuses to do it.

When I first went into the bean packing, I was associated with Fred Rukoff, who was the foreman there. That was in 1930. And the two or three years when I was there, there was a time when people were being laid off, and each time that it came when we had to lay off somebody, I suggested Victor Lukans' name to be laid off because he was so unsatisfactory. But I never could get it through on account of his length of service. Well, that is just a back-

ground to show you the kind of satisfaction that Victor has given, in my opinion. And it hasn't been any better lately. In fact, not very long ago, Mr. Heinrich and I had a talk with Victor, telling him that his work had to continue—he had to produce a day's work in order to keep a job at all.

Well, a few weeks ago Victor was changed on his job; that is, the job which he had had, the mechanic's job was eliminated, and what few duties there were remaining on that job were combined with a job of another boy. So that the other boy takes care of the work which Victor used to do, together with the duties which he had been taking care of. And Victor was put on the sealing machine.

Well, now, it so happened that the boy that ran the sealing machine soon after that got a palmer infection, and he had to have light work, so he had to go back to the sealing machine, and that meant that Victor went down to the end of the conveyor.

Now, Victor testified that he was moved to another department, and that is absolutely not true. This job on the [fol. 793] end of the conveyor is and for over ten years has been an integral part of the bean packing department, handled by the bean packing department, supervised by the bean packing department, and the men down there are on the bean packing department's payroll.

Q. Does he get the same wages that he got before?

A. He does.

Q. The witness Canjar testified that you threatened to fire him one time because of union activities. Is that true?

A. No, sir.

Q. What are the facts?

A. The fac' of that are that I called Matt over to my desk, oh, I believe it was right by the windows near my desk one night after quitting time. He had already punched out. I had heard reports that he was calling people names, and, particularly, at this time that he had thumbed his nose at one of the fellows up there in the bean baking on that day. And I opened up the conversation by saying, "What is this I hear about you thumbing your nose," or something like that, "thumbing your nose at somebody." And he pretended that he didn't know what I was talking about. As a matter of fact, I don't believe that he admitted doing that. But as I recall it, he did admit calling somebody

names, some of them names. And I said, "Well, now, Matt, we can't have that around here, and if this name calling is going to keep up, I am going to fire you, because I won't have it. I won't stand for it around here."

Matt says, "Oh, no, Mr. Locke, if you fire me, it will be because of the union."

"Matt, I didn't say that." I said, "If I fire you, it will be because you called names, and if you continue to call names and keep it up, I will have to fire you because we can't have that kind of work around here."

Q. There was a witness named Vilah testified that there was some mix up, that he was told he was going to get a raise and then he didn't. What are the facts about that?

A. Well, that was a very unfortunate happening. This happened at one of the times when quite a number of raises were given out. And Mr. Heinrich always goes over the rates with me. I don't believe Mr. Heinrich even knows about this. Then I tell my foreman who gets a raise or not, or any of the ones who are to have this increase, and then [fol. 794] they notify their men. And I either made a mistake or Andy Vajentic made a mistake and notified Mike Vilah of a raise in a particular pay, which he didn't get. And then I had to go to him and correct that notification.

Now, Mike later testified that he got two raises right in succession. Well, he doesn't know it, but one of those raises was because I felt that it was a dirty trick to disappoint him by telling him he got a raise and he didn't get it, and I got one of those raises for him to make up for that one that he didn't get, or that he thought he got and didn't get.

Q. He also said one time you said you could fire him any time you wanted to, or something like that, when you had some trouble. What were the facts there?

A. Well, Mike Vilah, he asked him also—I asked him also to stop and see me one night. I don't remember whether this was before or after Matt saw me, but it wasn't the same night, and I said, "Mike, this has been a pretty good place to work since you have been here, hasn't it?"

And Mike said, "What do you mean?"

I said, "Well, Mike, we have always got along well together; we have always treated each other nice, and everybody that works here has tried to act like a gentleman."

I said, "Don't you think you ought to act like a gentleman and keep it a nice place to work?"

And Matt said, "What do you mean?"

I said, "Well, Mike, gentlemen don't call people names." I said, "Mike, you called so-and-so a certain name today."

And he admitted he did.

And I said, "Mike, don't you think you ought to"— First I told him there was too much of that going on and that it was interrupting the work and causing dissension and the fellows weren't getting their work done, and it would simply have to stop or I would have to fire people for calling names, and he would be one of the first, if it came down to that, if he didn't stop calling names, and then I finally got him to agree and promise that he wouldn't call any more names, that he would try to keep the place peaceful and make it nice place to work again.

Q. Was this name-calling between the two union groups? [fol. 795] A. It had been reported to me that the person he called this name was one that he was trying to get to sign up in his group.

Q. With the A. F. of L. group?

A. Yes.

Q. He was an A. F. of L. man?

A. Mike Vilah was, as I understand it.

Q. Did you at any time say to any employee he had to join the association, or that the company wanted him to join the association, or indicate, in any way, that you wanted him to join the association?

A. No, sir, I did not. I never talked to an employee about unions. That is, if the subject ever came up, I always made it very clear that they could belong to either union they wanted to or they didn't have to belong to any union. It wasn't any of my business.

Q. Were you present at the meeting of foremen that Mr. Heinrich called?

A. I am present at all meetings and I have a vague recollection of that meeting.

Q. Do you remember what he said in that meeting.

A. I don't remember the exact words.

Q. Do you remember what the substance——

A. I know it was a policy that we couldn't have anything to do with it, and I presume I got it in that meeting, because I got my instructions from Mr. Heinrich, although.

Mr. Heinrich gave me, at other times besides foremen's meetings, instructions.

Q. And what were they?

A. Not to have anything to do with it. It was none of our business.

Mr. Reed: I offer respondent's exhibit 4 in evidence.

Trial Examiner Walsh: Have you any objection, Mr. Kleeb?

Mr. Kleeb: No objection.

Trial Examiner Walsh: It may be received.

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 4 and received in evidence.)

Mr. Reed: Cross-examine.

Trial Examiner Walsh: While we are at this point, let [fol. 796] us have a five-minute recess.

(Thereupon a short recess was had.)

Trial Examiner Walsh: The hearing will come to order. Mr. Kleeb.

Cross-examination.

By Mr. Kleeb:

Q. It was general rumor, was it not, that came to you about this petition being stolen? I mean, you heard that through general rumor, that this petition that was signed was stolen?

A. I can't recall exactly how I heard it. Probably it came to me either through the foreman or forelady in that department.

Q. That they had heard about it?

A. Yes.

Q. And they told you that they had heard about it and reported it?

A. That's right.

Q. In your speech you told your group of employees that rumor is not very reliable, didn't you?

A. I believe that's in there; something like that.

Q. Yet you thought it was sufficiently reliable to write a three-minute speech and address your employees, didn't you; about a stolen paper?

A. I had more evidence than mere rumor. As I say, I believe it had been reported to me either by the foreman or the forelady that that had been stolen.

Q. Do you know how they knew about it?

A. I didn't ask them how they found out.

Q. Well, if it was not rumor, what do you call it? Hearsay? Indirectly you——

A. I think possibly one of the girls who was present when it disappeared told them. I don't know.

Q. Told the foreman or forelady?

A. Yes.

Q. And the foreman or forelady told you?

A. That's right.

Q. And then you wrote a speech about it?

A. That's right.

Q. You stated that you didn't know, personally, at that time, anything about petitions, didn't you?

Mr. Reed: He didn't say that.

A. I didn't say that; I don't remember saying that.

Q. Did you know anything about association petitions at that time?

[fol. 797] A. I had been shown one some time before that.

Q. By Matthew Curl?

A. I don't know how long particularly before that; that was the first I ever knew about it.

Q. And he came up to you during working hours, didn't he?

A. No.

Q. When?

A. It was on my way to lunch, right after 12 o'clock.

Q. And did you read the petition?

A. I did.

Q. And were there signatures on it?

A. There were no signatures.

Q. Blank?

A. That's right.

Q. Did you ask him anything about it?

A. No, I said, "I don't know anything about it."

Q. And didn't you?

A. I didn't know a thing about it. I had never seen it nor heard of it before that time.

Q. And did you know the purpose of it?

A. I only knew what it said on the heading, there; something about the Employees Association, or something like that. I didn't know anything about it, didn't know whether it was another union or another 57 Club, or what it was.

Q. And you heard nothing more about it until this foreman or forelady told you that a petition was stolen; is that right?

A. I didn't say that.

Q. Well, is that right?

A. I wouldn't say I heard nothing more about the union, because you were hearing about that; there was kind of a constant turmoil.

Q. Sort of a rumor; right?

A. Well, there were rumors and there were statements, and the rumors were causing uneasiness among the people, and threats of violence were causing an uneasiness among the people.

Q. Well, are we to understand, Mr. Locke, that you wrote a speech and read it to these employees without getting any approval from any superior officer?

A. Mr. Kleeb, I did that. There was absolutely no one saw that speech, saw that speech before I gave it, except myself, nor knew about it.

Q. And you made that three-minute speech which you [fol. 798] gave to the employees under you merely based upon a statement by a foreman or forelady that a petition for an association was stolen, didn't you?

A. That's right.

Q. Did you make any inquiry as to whether it was stolen or torn or lost or any such thing?

A. No, I told you the statement was from my foreman or forelady.

Q. Which was based upon the statement of some girl, as far as you know?

A. As far as I know, but, at the time, I actually believed and felt that I had reason to believe that the petition was stolen, and, to the best of my knowledge, it's still that way.

Q. Why did you have reason to believe that?

A. Because my foreman or forelady told me, and I believed them.

Q. So you believe everything your foreman and foreladies tell you, don't you?

A. I have a lot of confidence in them.

Q. That's why you don't believe your employees when they tell you they did or didn't do something?

A. I didn't say that.

Q. You testified one of these employees was supposed to have thumbed his nose at somebody and pretended he hadn't; didn't you say that?

A. I didn't say that. I said he didn't admit that he did.

Q. You don't say he pretended he didn't, do you?

A. I don't recall saying that. I might have.

Q. You testified that you knew that the A. F. of L. and the association were circulating petitions. Don't you know it's a fact that the A. F. of L. did not ever have any petitions signed by anybody?

A. No, I don't know that as a fact.

Q. Do you know that they did have a petition?

A. No, not definitely.

Q. And you don't know whether the A. F. of L. had petitions or not, did you?

A. Not definitely.

Q. Did you hear rumors to that effect?

A. I have heard some, yes.

Q. And you believed that, did you?

A. Probably. There was enough going around in the factory that you could weigh it in your own mind and weigh the evidence and——

[fol. 799] Q. How could you believe those rumors, Mr. Locke, when you told a group of employees under you that rumors are very unreliable?

A. Well, you have to select between what you believe and don't believe. Any man has to do that in any position where he is, to use his own judgment.

Q. But sometimes rumors are reliable and sometimes they are not reliable?

A. I would say most of the time rumors are not reliable.

Q. It's up to the individual to decide whether they are or not?

A. That is true. I have to take the evidence I hear and decide.

Q. Did you know Mike Vilah was an A. F. of L. member?

A. I didn't know it definitely, but Mike Vilah was one of the leaders; he was specifically referred to as Frank Novak's bodyguard, and everyone knew that Frank Novak was interested in it, and Novak was the leader in it, and

more or less assumed that, if Mike Vilah was his right-hand man.

Q. Mike Vilah was Frank Novak's bodyguard?

A. That's true.

Q. The reverse of that is true, but the fact Frank Novak needed Mike Vilah as a bodyguard——

Mr. Bostwick: That depends on how good a boxer he was.

By Mr. Kleeb:

Q. You testified, or, rather, in reading your speech, you told the employees that there was a rumor circulating that if the association secured a majority of the employees that wages would be cut, and you told the employees there was no truth to that rumor; when times were good wages would increase; didn't you?

A. Something like that.

Q. Did you ever hear a rumor that if the A. F. of L. got a majority of votes that the Heinz plant would shut down?

A. I, personally, never heard that rumor.

Q. Never heard that rumor?

A. No, sir.

Q. How many times have you seen one of these petitions that the association was circulating for signatures?

A. I had one in my hand one time and read it at that [fol. 800] time, to which I testified; when Matt Curl handed it to me. One other time I saw it but I didn't have it in my hand, and that was the time when Moskum was up there on the platform and Moskum was mad and wanted to give it to me, this petition of his, and I wouldn't take it. I said, "I don't want to have anything to do with it." I said, "If you want to get rid of it, you give it back to the person that gave it to you, back to him."

Q. When was this?

A. This was the incident that Maternick brought up in his testimony.

Q. Tell us about this?

A. Moskum was mad about something, but he was mad about the petition and he wanted to give it to me, and I refused to take it.

Q. Did he say why he wanted to give it to you?

A. He just said he didn't want it any more.

Q. Did he say why he wanted to give it to you?

A. No, I don't recall that he did.

Q. You knew what it was, however, didn't you?

A. When I saw it, yes. He told me it was a petition, employees' petition.

Q. And when did this occur?

A. I don't know what the date was, but this was the incident that Maternick brought up in his testimony.

Q. You are a very personal friend of Mr. Shinabarger, aren't you?

A. Not that I know of.

Q. Isn't it a fact that it was through Mr. Shinabarger you were brought into the Pittsburgh plant from the midwest?

A. I think probably Mr. Shinabarger had something to do with that.

Q. Were you working for Heinz out in the midwest?

A. I was.

Q. Out in Colorado?

A. I started out there. I came from Muscatine to Pittsburgh.

Q. And you say it was because of Mr. Shinaberger you were brought here to Pittsburgh?

A. All Mr. Shinabarger had to do with it, as I understand, was one time he interviewed me in the plant in Muscatine.

Q. And you feel, maybe, because of that you were brought here?

[fol. 801] A. I feel maybe I might have made a fairly good impression and they had an opening here. Anyway, it was not for a year or more when I came in here.

Q. You didn't replace anybody when you came here, did you?

A. I didn't go to work in the manufacturing department when I came here.

Q. This job you now have, in charge of the bean building, isn't it?

A. Mr. Kleeb, I didn't get that job until four or five years after I came to Pittsburgh.

Q. But you didn't displace anybody when you got that job, did you?

A. Mr. Poole formerly had that job.

Q. In charge of the bean building?

A. That's right.

Mr. Kleeb: That's all.

Mr. Reed: That's all.

Trial Examiner Walsh: You are excused.

(Witness excused.)

Mr. Reed: Mr. John Palivoda.

JOHN PALIVODA, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Reed:

Q. Mr. Palivoda, you are employed by the Heinz Company, are you?

A. Yes, sir.

Q. Are you a foreman?

A. Yes, sir.

Q. In what department?

A. Bottling department.

Q. What?

A. Bottling department.

Q. How long have you worked for the Heinz Company?

A. Going on 18 years.

Q. Now, there was a man named Shindler testified here; do you know Maurice Shindler?

A. I heard of him but I don't know him. I never spoke [fol. 802] to him in my life.

Q. He testified on the evening of May 20th, 1937, he was eating dinner in the grill in the service building and that Mr. Hayes and yourself and Mr. Skertish were seated at the same table with him, and two other foremen whose names he doesn't know. He stated that you, Palivoda, reported to Hayes your progress concerning certain activities in getting girls in the department to sign up for the Heinz Employees' Association and that after you had made a certain report on how many you had gotten signed up that Mr. Skertish made a report along the same line. Is that true?

A. I ate in the grill that night, on the——

Q. First, is that true?

A. No, it is not.

Q. Now, do you know where you were to eat that night, or what happened?

A. Yes, I do.

Q. Tell us what happened?

A. That was the night of the safety council meeting. I am a member of the council, and that night Mr. Skertish and I ate at a table for two; nobody else could sit there but just two people; and the reason we sat there, Mr. Skertish was worried about his accident. He had never attended one of these meetings before, and he wondered what he was going to say, what he was going to do, and I remember real well I was advising him what to do, and what to say, and how to explain the accident, and I remember that, that we talked for, oh, I guess three quarters of an hour. We smoked, then, and then, after that, we went to the meeting. I don't remember seeing this Shindler there at all.

Q. Did you see Mr. Hayes there?

A. I think Mr. Hayes was there, but I didn't see him.

Q. At any rate, you were not seated at the table with Hayes that night?

A. I was not.

Q. And you did not make any report on members of the union or anything of that sort?

A. I did not.

Q. Did you have anything to do at any time with getting any members for the employees' association?

A. I did not.

[fol. 803] Q. Did you ever make any report back to Hayes or anybody else as to who would join or wouldn't join, or anything of that nature?

A. I did not.

Q. Do you have a record of those safety-council meetings?

A. Yes, I have the minutes of the meeting but I don't have them with me.

Q. Well, do you—have you verified that date?

A. Yes, sir.

Q. Which is the date Mr. Shindler gave?

A. Yes, sir.

Q. Do you remember any other occasion when you and Skertish had dinner together there?

A. Yes, we often eat together. Every time we work overtime together we sit together.

Q. And a witness, Veronica Gajewski, or some such name as that, testified you stopped to inspect her work one day

about three weeks before the strike, and started talking unions to her and asked her what union she was for. Did you ever stop and engage her in conversation about unions?

A. Yes, I did, but not about unions.

Q. What did you talk to her about?

A. I talked to her about—about her work.

Q. Did you ever tell any employees that they should belong to the union, or any union?

A. I never mentioned unions.

Q. Did you—a witness named Herman Pfeffer testified that you told him that the outside union was nothing but a bunch of hunkeis and that most of them were not citizens and that Frank Novak was drunk, leaning against the bar, claiming he had 500 members. Did you ever make any such statements as that?

A. I don't talk to my people that way.

Q. Did you ever make that statement?

A. No, sir.

Q. Or anything like it?

A. No, sir.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. When was this time you talked to Veronica Gajewski?

A. It was before the strike.

Q. Do you recall how long before?

[fol. 804] A. About two weeks.

Q. When did you talk to her before that about her work?

A. I don't remember. I often talked to her—I talked to a number of the girls.

Q. Since January of this year how many times did you talk to her?

A. Her?

Q. Yes.

A. I don't remember.

Q. 10 times?

A. January——

Q. 10 times?

A. Well, I can't say any number, because I don't remember how many times. I have 212 people in my department and I don't talk to her every day.

Q. Mr. Reed just picked out a particular bit of testimony and didn't even give you the date and the day, and you said you remembered what you did that day.

A. I heard her testimony and——

Q. You what?

A. I heard her testimony and I remember talking to her about it.

Q. When was that?

A. I don't know just when, but I remember talking to her along that line.

Q. Along what line?

A. Along her work, and about her sister.

Q. And what did you have to say to her about that?

A. I asked her what was the matter; if she had any grievance, because that day there was a lot of agitation up there. There is about 90 girls in that room, and I could hardly hear over the telephone, everybody was talking at one time, and I went around to the girls to find out what was the matter, and I came over to Veronica and I asked her if she liked her work, and she said she did, and we got around to her sister, and I asked her whether her sister liked this place to work.

Q. All that this talk was all about was that you wanted to find out——

A. They were all talking, and I wanted to find out.

Q. It was unusual to have them talking like that?

A. Yes.

[fol. 805] Q. Did you find out what they were talking about?

A. They were talking about unions, I guess.

Q. Why do you "guess" that?

A. Because everybody was talking about it at that time.

Q. Why did you "guess"? You said, "They were talking about unions, I guess."

A. You had to be blind or deaf if you didn't think they were.

Q. A foreman would have to be blind not to see what was going on among his employees, wouldn't he?

A. That's right.

Q. And why did you ask her about her sister?

A. Well, we got into the conversation about working conditions and then I didn't know she had a sister in the preserve department at that time, and that's how we got talking about her sister. She told me her sister worked

there eight years and she liked it real well, and I said, "Do you like it; are you satisfied?"

And she said, "Yes."

Q. Why were you concerned about whether or not Veronica Gajewski's sister was satisfied or not, in some other department?

A. Well, I don't know how that came up. I think she brought it up, that she had a sister working there.

Q. And why were you interested in whether she was satisfied?

A. Why, we are interested in all the people. I am interested in everybody in my department.

Q. Is she in your department?

A. Absolutely.

Q. Her sister?

A. No, but she is.

Q. Why were you interested about the welfare of her sister in some other department?

A. Because she brought it up.

Q. The fact her sister worked some other place else?

A. Yes.

Q. Did she volunteer to tell you whether or not her sister was satisfied, or not?

[fol. 806] A. Yes.

Q. What did she say?

A. Well, she said her sister worked here for eight years and she liked it real well and she thought it was a darn good place to work; she was satisfied.

Q. Then there was no reason to ask her about her sister being satisfied?

A. Whenever you talk—inspect her work—she brought it up herself.

Q. Why were you inspecting her work? I thought you were trying to find out what all the talking was about.

A. In going around that way, I wanted to find out.

Q. You mean by pretending to inspect?

A. Not pretending, I actually looked at her work.

Q. Was that customary?

A. Yes.

Q. How regularly did you go to Veronica Gajewski and inspect her work, during a month?

A. I would go over there once a week.

Q. To inspect her work?

A. Her work and a lot of other people. Sometimes oftener; a forelady would call me over, show me something.

Q. You frequently eat in this cafeteria in the service building if you work overtime, don't you?

A. That's right.

Q. Every time you eat there you don't eat at a table for two, do you?

A. Not every time, no.

Q. You have, on occasions, had your meal at a table for eight or ten; around these round tables?

A. That's right.

Q. Do you, under oath, deny you ever were at a round table with several other foremen and Maurice Schindler was also at that table?

A. Yes.

Q. You deny that?

A. I deny it.

Q. I thought you said you didn't know Maurice Schindler?

A. I didn't know him, no. I knew him to see, but I never spoke to him in my life; to this day I haven't spoken to him.

Q. Did you know Maurice Schindler, who he was and what he looked like, on May 20th?

[fol. 807] A. Yes.

Q. How did you know that?

A. Because I had seen him previously.

Q. Where?

A. In the factory.

Q. How did you know it was Maurice Schindler?

A. My assistant, Mr. Skertish, told me.

Q. And you say you deny ever being at a table with Maurice Schindler?

A. Yes, I do.

Q. Did you consider Schindler in the same category or plane as foreman——

Mr. Reed: This is objected to as incompetent and immaterial; it doesn't make any difference what he considered him.

Trial Examiner Walsh: Sustained.

Mr. Kleeb: That's all.

Trial Examiner Walsh: Do you want anything further?

Mr. Reed: No.

Trial Examiner Walsh: You are excused.

Mr. Reed: I thought you were going to ask questions.
Trial Examiner Walsh: No, you are excused.

(Witness excused.)

Mr. Reed: Mr. Joseph Skertish.

JOSEPH SKERTISH, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Your name is Joseph Skertish?
A. Yes, sir.
Q. Do you know Maurice Schindler?
A. Yes, sir; I was introduced to him about two months before the strike.
Q. You work for the Heinz Company?
A. Yes, sir, I do.
Q. How long have you been employed by that company?
A. Nine years.
Q. Nine years?
A. Yes, sir.
Q. And what is your job?
[fol. 808] A. I am foreman.
Q. In what department?
A. In charge of the funnel bottling department.
Q. Were you—under whom is that department?
A. That department is under Mr. Palivoda.
Q. Mr. Palivoda is your superior foreman, is he?
A. Yes, with Mr. Heinrich. He is my superior foreman. I come under him, the way the other foremen come under Mr. Locke and Mr. Brooks and so on.
Q. Maurice Schindler testified on the evening of May 20, 1937, he was seated in the grill in the service building and that you and Mr. Hayes and Mr. Palivoda and two other foremen came in and sat down together and had dinner together and that Palivoda reported to Hayes his progress in getting some members, girls in his department, to sign up for the Heinz Employees Association, and that following

Palivoda's report you made a report along the same line. Will you state whether or not that is true?

A. That is not true.

Q. Will you state what did happen that night, if you know?

A. Well, I had received an invitation to attend a Heinz Safety Council meeting which was held on May 20th. At 5 o'clock I went to supper with Mr. Palivoda. We had supper together at a side table which had accommodation for only two people.

Q. What fastens that in your mind?

A. What fastens that in my mind?

Q. How do you remember that incident; yes?

A. That was a new experience to me and Mr. Palivoda, since I work with him, as a friend of mine, and I wanted someone to coach me along. It's a new procedure and I didn't know what was the procedure and I wanted to know what I had to say in regard to a serious accident I had in my department and I wanted to be alone and talk it over with him in private before I would face the Safety Council.

Q. You were going to meet the Safety Council that night, were you?

A. Yes.

Q. When did the accident happen?

A. Either the 28th or 29th, at the time of the flood. A man had a fractured toe. He had been in the hospital, I believe, eight or nine weeks, and I was invited to attend [fol. 809] this meeting and give my views of the case so that and accident like that would be prevented, if there would ever happen, if an accident like that would ever happen again, so it could be prevented.

Q. You are quite certain, are you, you did not have dinner with Mr. Hayes and two other foremen that night?

A. I am positive of that.

Q. Did you at any time have dinner around a table which Mr. Schindler sat, that you recall?

A. No, sir, I don't think I ever did. Mr. Schindler generally eats dinner with the other draftsmen from the engineering room at a side table or a little way from the foremen. He is,—as a general rule that's where he eats his supper.

Q. Did you ever at any time make a report to Mr. Hayes about the number of girls you had gotten signed up with the Association or anything of that character?

A. I never did that because Mr. Heinrich, the superintendent, wanted me not to talk unions or to have anything to do with them.

Q. Did you ever tell anybody they had to join the Heinz Employees Association?

A. No, sir.

Q. Did you ever hear Mr. Palivoda at any time make a report to Mr. Hayes or anyone else of the girls he had seen to belong to the Association?

A. Never, sir.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. It is possible, is it not, that you could have had dinner around the 20th of May of this year at a large table and Mr. Schindler was present and you forgot?

A. Around the 20th of May?

Q. Around that time?

A. No, not around that time because I haven't worked overtime at that time except this one particular night when I had to face this council.

Q. It is possible you could have had dinner at a table when Mr. Schindler was present and you forgot about it?

A. No, I don't think—personally, I don't think you [fol. 810] would forget him if you would have had supper or dinner with him at a table.

Q. Why do you say that?

A. Well, his actions are—the accent of his voice and the way he talks. You know, you meet people and you don't forget them so easy, sometimes, and others you easily forget about them.

Q. You are an assistant to Mr. Palivoda, are you not?

A. Yes.

Q. An assistant foreman?

A. No, sir. I am not an assistant foreman. I am a foreman on my own hook. I have a department to take care of, and I am responsible to Mr. Heinrich.

Q. And Mr. Palivoda?

A. Well, no, Mr. Palivoda—I have no—I am not responsible to Mr. Palivoda in any way as far as the quality of the work is concerned or production or anything of that

sort. The only thing is I have worked with Mr. Palivoda all these years and he is just a friend of mine.

Q. By the way, you are paid by the month, aren't you?

A. Yes.

Q. It's a fact, isn't it, that you wear a different uniform than most people that work under you?

A. I have been a foreman for a long time and I wear the same uniform that they do.

Q. What kind of a uniform is that?

A. Oh, striped overalls, white cap, white shirt; as a rule they all wear white shirts; tie.

Q. However, you are known to the employees as a boss?

A. I wouldn't say a boss. A boss is one that will nag at the people more than onyone else. I just supervise the job, that's all.

Q. You are just a foreman, is that it?

A. A foreman.

Q. That's different than a boss?

A. Sure; in the sense of the word, it is.

Q. Mr. Palivoda testified that when—that he knew Schindler because you pointed him out to him. When was that done?

A. That may have been done when Mr. Schindler used to come up to my department to measure equipment and so on. [fol. 811] He had business in my department.

Q. Do you recall pointing him out to Mr. Palivoda?

A. Well, that's rather hazy. I may have and——

Q. And you may not have?

A. Well, Mr. Palivoda comes to my department quite often.

Q. You may have——

A. People come and go and we talk about them in a business way.

Q. You may have or you may not have. You don't remember?

A. I probably did point him out to him.

Q. But you don't know for sure whether you did or not?

A. I think I did.

Q. When?

A. Because Mr. Schindler, about two months before the strike, Mr. Schindler came quite often up to my department. A lot of times Mr. Palivoda was down there and he would ask, "Who is this man?" Or, "What's he doing here?"

Or so on and so forth, but I never introduced him to Mr. Palivoda.

Q. Never formally introduced him?

A. But I do remember Mr. Palivoda already did ask me who that fellow was and what he was doing, what business was up in that department.

Q. Now, you do remember that you did point him out to Mr. Palivoda?

A. Yes.

Mr. Kleeb: That's all.

Mr. Reed: That's all.

(Witness excused.)

Mr. Reed: Mr. Fred Gerhard.

FRED GERHARD, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Where do you live, Mr. Gerhard?

A. 2615 Norwood Avenue.

Q. You work for the Heinz Company?

A. Yes, I do.

Q. What's your job?

A. I am a mechanic.

[fol. 812] Q. Are you an hourly employee?

A. Yes.

Q. Paid by the hour, are you?

A. Yes, I am.

Q. You are not a foreman?

A. No.

Q. There was a witness named Marak testified that you had sent for him to come, that you wanted him to join the Heinz Employees Association. Were you a member of the Heinz Employees Association?

A. Yes.

Q. Did you solicit members for it?

A. Yes, I was interested in getting more members.

Q. Did you ever send for Marak to come to you to talk about it?

A. No.

Q. Did you sign Marak up at all. Did you have anything to do with signing him up for the association?

A. I don't remember that Marak signed up with me or to me, however, you want to——

Q. Do you know C. O. Harris?

A. Is that Charlie?

Q. C. O. Harris; do you know him?

A. Yes, I do.

Q. Is he in your department?

A. Yes.

Q. What kind of work does he do?

A. He is a mechanic on the cap liming machines.

Q. Does he do the same kind of work that Mr. Bennett does in his department?

A. The same kind of work but different machines.

Q. Different machines; I understand that, of course, yes.

A. Yes.

Q. Is he a member of the American Federation of Labor, do you know; Harris?

A. I don't know.

Q. Do you know whether Mr. C. O. Harris was on the picket line or not, during the strike?

A. Only by rumors. I have not seen him.

Q. You did not see him yourself?

A. No.

Q. You are still a member of the Heinz Employees Association?

A. I still am.

Mr. Reed: Cross examine.

[fol. 813] Cross examination.

By Mr. Kleeb:

Q. You are a group leader; aren't you?

A. If you want to call me that way.

Q. Mr. Heinrich called you that.

A. I heard that.

Q. Then are you a group leader or aren't you?

A. I think I am.

Q. Don't you know?

A. I was never told I was a group leader.

Q. What makes you think you are?

A. Mr. Heinrich testified that way.

Q. That's the first you knew you were a group leader?

A. Absolutely.

Q. You are a repairman or mechanic in the cap department and you work on cap stamping machines?

A. Yes.

Q. Who actually does the production work on the machines; that is are they girls or fellows?

A. Do you mean who operates the machines?

Q. Yes, who operates the machines?

A. The girls.

Q. And these machines, as the name implies, stamp caps for bottle and jars, do they not?

A. Only for cans.

Q. For cans?

A. Yes.

Q. Who actually—you actually don't engage in operating these machines, do you, except in an emergency?

A. I do when I adjust the machines.

Q. I mean, as a matter of regular work, that is not your work?

A. It is not my regular work.

Q. The girls operate the machines?

A. The girls operate the machines.

Q. You are responsible for how many machines; to see that they are properly operated?

A. 20.

Q. 20 machines?

A. 20 machines.

Q. And your job is to go from machine to machine to see that they are operating properly and to adjust anything that might go wrong with them, is that right?

[fol. 814] A. No, not direct.

Q. What?

A. I would say— it is not the way you say it.

Q. Well, what is the fact?

A. I am called to the machine if something goes wrong.

Q. By whom?

A. Either by the girl direct or by the forelady.

Q. Well, suppose all the machines are operating properly, what are you doing?

A. I have never caught myself not doing nothing. I am always busy.

Q. On one or other of the 20 machines?

A. I am.

Q. How many years' service have you put in at the Heinz Company, approximately?

A. Nine years.

Q. And as a mechanic or repair man on these machines, what is your hourly rate?

A. Do I have to answer this?

Q. I am asking you.

Mr. Bostwick: It is certainly not cross examination.

Mr. Kleeb: If the Trial Examiner please, I think the record has indicated the variance in wages and these group leaders do receive quite a bit more than the other rank and file employees, and I think it is material.

Mr. Bostwick: The record doesn't show that. It is not a correct statement of the record.

Mr. Reed: It doesn't make any difference, anyway.

Mr. Kleeb: Then why object?

Trial Examiner Walsh: The Examiner says you must answer that or all of your testimony in regard to this matter will be stricken, Mr. Gerhard.

The Witness: You mean the hourly rate?

Trial Examiner Walhs: It's a perfectly clear question. How much do you make an hour?

The Witness: $1.40.

Mr. Kleeb: That's all.

Redirect examination.

By Mr. Reed:

Q. Mr. Gerhard, if you wanted to talk to the girls operating the machines, would you be free to go to the machines? [fol. 815] You wouldn't have to send to anybody to talk to them, would you?

A. I would be free to go to any machine and ask how the machine is operating, if she notices any faults.

Mr. Reed: That's all.

Trial Examiner Walsh: Just a moment, Mr. Gerhard. Are you through, Mr. Kleeb?

Mr. Kleeb: Yes, sir.

Examination.

By Trial Examiner Walsh:

Q. You are or you are not a group leader?

A. I was never told I am a group leader.

Q. Did you ever hear that word before this morning; group leader?

A. No.

Q. You had never heard of it before?

A. No.

Q. First you heard the words group leader was when Mr. Heinrich was giving his testimony on the stand?

A. That's where I recollect—that's where I remember it, now.

Q. You never heard of it before Mr. Heinrich testified on the stand?

A. Not that I remember; nobody ever addressed me that way.

Q. You never heard of the phrase? I don't care whether you were addressed that way. You never heard of the phrase?

A. I read it in books, somewhere.

Q. No; on the job?

A. Not on the job.

Q. You never considered yourself a group leader prior to this morning?

A. I don't.

Q. Well, you do now, I suppose, because it has been testified here you are one, but you have never, prior to this morning, considered yourself a group leader?

A. No; considering myself a mechanic.

Trial Examiner Walsh: That's all.

Redirect examination.

By Mr. Reed:

Q. You are the head of that particular group of me- [fol. 816] chanics, though, in your division, aren't you?

A. Well, yes——

Q. How many mechanics are there working with you on those machines?

A. On the machines, that is not the mechanic, he is more of a helper.

Q. How many do you have?
A. I have got one helper, right on the machines.
Q. And in the shop, you have the shop men?
A. Yes.

Mr. Reed: That's all.

(Witness excused.)

Mr. Reed: Christ Dietz.

CHRIST DIETZ, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows.

Direct examination.

By Mr. Reed:

Q. What is your occupation, Mr. Dietz?
A. Looking after the factory janitors.
Q. Of the Heinz Company?
A. Of the Heinz Company.
Q. How long have you been employed by the Heinz Company?
A. Just a little over 51 years.
Q. Mr. Novak testified that on April 15, 1937, when he was going around the dining room in the lunch hour advising A. F. of L. members of a meeting that you followed him around from table to table with Mr. Hargraves, is that true?
A. No, sir.
Q. And have you ever followed Novak around at any time or anybody for the purpose of checking up on whom they saw or anything of that kind?
A. No, sir. The fact is I didn't know Mr. Novak at that time yet.
Q. Did you ever go around with Mr. Hargraves checking up on anybody?
A. No, sir.

Mr. Reed: Cross examine.

[fol. 817] Cross examination.

By Mr. Kleeb:

Q. Are you a member of the Heinz Employees Association?

A. No, sir.
Q. Are you a member of the association?
A. Beneficial Association?
Q. No, the Heinz Employees Association?
A. No, sir.
Q. Do you know anything about it?
A. No, sir.

Mr. Kleeb: That's all.
Mr. Reed: That's all.

(Witness excused.)

Mr. Reed: J. B. White.

J. B. WHITE, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Where do you live, Mr. White?
A. I live in Perrysville.
Q. Are you employed by the Heinz Company?
A. Yes, sir.
Q. What is your job?
A. Foreman, bean cleaning department.
Q. How long have you worked for the Heinz Company?
A. I first started in 1923.
Q. That is 14 years, then?
A. 14 years.
Q. Do you know a man named Tony Novagadiac, or some such name?
A. Yes, sir.
Q. He testified here that you told him it would be good advice for him, Tony, to sign up with the Employees Association and that you said, "If you don't sign that you will be out of a job some day." Did you ever make that statement?
A. I never made such a statement.
Q. Is it true? Is the statement Novagadiac made true?
A. No, sir.
[fol. 818] Q. Did you ever make that statement to anyone?
A. No, sir.

Q. Did anyone ever ask you for advice about the Heinz Employees Association?

A. Well, they might have asked advice.

Q. What did you tell them?

A. I told them it was entirely up to them; they could sign up with whatever union or association they wanted to. It was none of my business.

Q. Did you attend the meeting at which Heinrich spoke?

A. Yes, sir.

Q. What did Heinrich tell the foremen?

A. He told us we weren't to have anything to do with these unions. That is, if they asked us for advice we could tell them to do what they wanted to do, but that was their own affair; it wasn't ours.

Mr. Reed: Cross examine.

Mr. Kleeb: No cross examination.

Mr. Reed: That's all.

(Witness excused.)

Mr. Reed: Anna McGinley.

ANNA McGINLEY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Your name is Anna McGinley, is it?

A. Yes, sir.

Q. I believe you are forelady in the noodle soup filling department of the Heinz Plant?

A. Yes.

Q. How long have you been employed by the Heinz Company?

A. More than 18 years.

Q. 18 years?

A. More than 18.

Q. There is a witness, Carl Lukitsh, who testified here. Do you know Carl Lukitsh?

A. Yes, sir.

Q. He testified on one occasion a man name- Bob Andrews had Heinz Association petitions in a cupboard in your de- [fol. 819] partment and went around to all the girls in your department during working hours and took them away a few at a time over to the cupboard to have them sign a petition of the Heinz Employees Association; that this was in full view of you and that you didn't stop or reprimand Andrews for his activities. Is that true?

A. No, sir.

Q. Did you ever see anyone keeping petitions in your department to which they took girls over to sign in a cupboard or anywhere else?

A. No, sir.

Q. Did you ever seen any petition circulated in your department?

A. None was circulated in my department.

Q. What were your instructions about the unions?

A. I was told that people were to do just as they pleased and it wasn't any of my affair which association or any that they joined.

Q. Did you ever tell anyone they had to join any association?

A. No, sir.

Q. Do you know Bob Andrews?

A. Yes, sir.

Q. What is his job?

A. He is a mechanic on the filling lines.

Q. He comes to the machine only when it's out of order?

A. Not necessarily. He keeps the machines in order.

Q. Did he have opportunity to go from one girl to another?

A. Yes, sir.

Q. Is he an hourly employee?

A. Yes, sir.

Q. Would it be possible for him to take the girls away from the machines over to a cupboard without your knowing it?

A. No.

Q. The machines run continuously?

A. Always.

Q. Why would it be impossible?

A. Every girl has a job and when she leaves, she would hold up production.

Q. You would know immediately if the girls were being taken away?

[fol. 820] A. Yes, sir.

Mr. Reed: Cross examine.

Cross examination.

By Mr. Kleeb:

Q. Are you in your department every single minute of the day, for eight hours?

A. Not every single minute. I have quite a bit of work to take care of.

Q. Then it would be possible for the girls to leave in your absence, wouldn't it?

A. I doubt it. Mr. Andrews would be there if I weren't.

Q. That is, Mr. Andrews would be responsible that they didn't leave their machines?

A. I also have a foreman.

Q. Why did you say Mr. Andrews?

A. Mr. Andrews is in charge of the machines. When it breaks down or stops he is there to see it, immediately.

Q. What do you mean; if Mr. Andrews took girls away from the machines in your absence you might not have known about it, isn't that a fact?

A. I don't think so, because it is his job to keep that machine in operation, in repair, and keep it going.

Q. It is not his job to get people to sign petitions during working hours, is it?

A. That, I don't know.

Q. How do you know there was no petition circulated in your department?

A. I don't know that there was because I didn't see it.

Q. Well, you are absent sometimes during working hours, aren't you?

A. Naturally.

Q. Well, then there might have been petitions circulated?

A. Not whenever I was there. I never saw it.

Q. Therefore, your testimony on direct that there were no petitions circulated in your department might not necessarily be true; is that not a fact?

A. Certainly, if I would be absent.

Mr. Kleeb: That is all.

Mr. Reed: That is all.

[fol. 821] Trial Examiner Walsh: That is all.

(Witness excused.)

Mr. Reed: Dominic Vajentic.

DOMINIC VAJENTIC, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. You- name is Dominic Vajentic?

A. Yes, sir.

Q. You work in the bean baking plant of the Heinz Company?

A. Yes, sir.

Q. How long have you been employed by the Heinz Company?

A. 32 years, since 1905.

Q. You are an hourly employee, are you?

A. Yes, sir.

Q. Not a foreman?

A. No, sir.

Q. You have a brother, I believe, Andy Vajentic who is a foreman?

A. Yes, sir.

Q. Do you know a fellow named Matt Canjar?

A. I do.

Q. Well, he testified here the other day that you told him, Matt, that your brother, Andy, was making you get names for the Heinz Employees Association?

A. No, sir.

Q. Did you ever tell him that?

A. No, sir.

Q. Did your brother Andy ever tell you to get signers?

A. No, sir.

Q. To the Heinz Employees Association?

A. No, sir; my brother never did tell me anything about it. He don't know nothing about it.

Q. Do you belong to the Heinz Association?

A. Yes, sir, I belong to the Heinz Association.
Q. Did you get names for them?
A. I did.
[fol. 822] Q. You still belong to it, don't you?
A. Yes, sir.
Q. Did you get any names during working hours?
A. Why, I did, a few of them.
Q. Did the others get names during working hours?
A. Yes, they did.
Q. Who gave you the petition?
A. Why, John Ubrey.
Q. Who is John Ubrey?
A. A fellow, an organizer.
Q. Did you ever tell anybody they had to join?
A. No, sir; I never forced anybody to join. I just go around and ask if anybody wants to join the Association, I sign him up.
Q. There was a man named Marinc who couldn't speak very well, but we agreed that if he could talk he would say that Andy Vajentic told him to go and see you for a paper for the Heinz Employees Association, that he saw you in the wash room and that you wrote his name on the petition. What do you recall about that?
A. Well, I went in the wash room, but nobody told me to go in the wash room. I went in the wash room myself, happened to go in the wash room. I find Joe Marinc in the wash room. Then I ask him if he wants to join the Association, and he say, "Yes."
Q. What did you tell him about the Association. Did you tell him anything?
A. I told him that the Association belonged to our employees alone, employees' affairs.
Q. You didn't tell him that Andy told you to see him?
A. No, sir.
Q. Well, now, what did he say?
A. Why, he signed. He say, "All right." He can't write, and I write his name.
Q. Then what happened after that?
A. After that, about a week ago, I heard of a complaint about it, that he don't like to belong to the Association. So I walk over to him dinner time, I say, "Joe, don't you like to belong to Association?"
He say, "Yes."

"I heard that you don't want to have your name on the paper."

"No," he said, "that is all right."

I said, "Now, listen, Joe," I said, " if you don't like [fol. 823] to have your name on the paper," I said, "I can scratch you off, because I have a complaint about it." I say, "I don't force nobody to join the Association." I say, "I just asked you and you said all right." I said, "Maybe you sign up before with somebody else?"

And he admit, he say, "Yes, I sign with Matt Canjar."

And I say, "All right, I scratch your name off."

And I did. I scratch his name off from petition.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. How long have you worked for the company?

A. 32 years.

Q. How long has your brother, Andy, worked for the company?

A. Oh, he must have work close to 40 years, about 38. I am not sure, but something like that he worked.

Q. How long has Andy been your foreman?

A. Oh, for about 20 years.

Q. Who gave you this petition that you were taking around?

A. That's John Ubrey.

Q. John Ubrey?

A. Yes, sir.

Q. Where were you when he gave it to you?

A. Well, he just pass by, he see me. Then he step in and he gave me that petition.

Q. That is, he passed by in your department?

A. Yes, sir, he passed through there.

Q. And he handed you this petition?

A. Yes, sir.

Q. And that was the first you ever knew about the association?

A. That is the first I ever knew about the association.

Q. And did John tell you what this petition was all about?

A. Yes, he told me.

Q. What did he tell you?

A. He told me that the petition is for Heinz Employees Association, is formed for the employees, only for employees alone, not any foremens or anybody else.

[fol. 824] Q. What else did he tell you?

A. That is all.

Q. Did he tell you what the purpose of this thing was for?

A. No, sir.

Q. Did he tell you what you were supposed to do with the petition?

A. He just told me to ask somebody to sign their name, if anybody willing to sign the name, sign his name on.

Q. Did he tell you when you were supposed to ask them to sign?

A. Why, he didn't tell me when.

Q. When did you go round and ask people to sign?

A. Well, I signed about two of them during working hours, and my brother find out about that and he stopped me. He told me, "You are not going to sign up anybody during working hours. If you would," he said, "you could do it dinner time, if you want to." He say, "I don't like to see you go around and ask anybody to sign up."

Q. Did John Ubrey say anything to you about getting signatures during working hours?

A. Yes, he told me during working hours I get the signatures.

Q. John Ubrey told you to go ahead and get the signatures during working hours?

A. During working—not during working hours. I mean noon hours.

Q. Ubrey told you to do it during noon hours?

A. Noon hours, yes.

Q. I show you Board's Exhibit 7. Is that the kind of a petition that John Ubrey gave you?

A. Yes, sir.

Q. Did he tell you who typed these, who typed the words on top of them?

A. No, sir, he didn't say nothing about it.

Q. And with just that information, Ubrey told you about this association, you went around and got signatures; is that right? The few minutes that he talked to you?

A. I didn't go around right away. When I got chance to go around, I went around.

Q. Did you ever talk to your brother Andy at home or any place else about this petition, about what it was for, and so forth?

A. No, sir.

[fol. 825] Q. Never talked to him about it?

A. No, sir.

Q. Do you live in the same house with Andy?

A. No, sir.

Q. How many names did you get?

A. Oh, I didn't get many. I get about six, seven names.

Q. And to whom did you give the petition to after you got the names?

A. To John Ubrey.

Q. Where was he when you gave it to him?

A. Why, he was in dressing room.

Q. Dressing room?

A. Yes.

Q. Did John Ubrey tell you what he was going to do with the petition?

A. No, he didn't tell me.

Q. Do you know what he did do with it?

A. No.

Q. You don't know much about it, do you? Do you? You don't know much about this petition business, do you?

Mr. Reed: The witness has said what he knows.

A. I told you what I know.

Q. That is all you know?

A. Sure.

Mr. Kleeb: That is all.

Redirect examination.

By Mr. Reed:

Q. You went to the Association meetings, didn't you?

A. Yes, sir.

Mr. Reed: That is all.

Trial Examiner Walsh: You are excused.

(Witness excused.)

Trial Examiner Walsh: We will adjourn until 1:30.

(Thereupon, a recess was had until 1:30 p. m.)

After recess.

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 o'clock p. m.)

Trial Examiner Walsh: The hearings will come to order.
Mr. Reed: Clara Gazzo.

[fol. 826] CLARA GAZZO, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. You are Clara Gazzo?
A. Yes.
Where do you live, Miss Gazzo?
A. Homewood.
Q. A little louder.
A. Homewood.
Q. You are one of the foreladies at Heinz, are you?
A. Yes, sir.
Q. How long have you been employed at the Heinz Plant?
A. 14 years.
Q. What department are you in?
A. The 5th floor, rice cereal department.
Q. Cereal. And how many girls work under you?
A. 16.
Q. Now Mr. Heinrich testified yesterday about a conversation with Miss Sherbon about a complaint that she had since the strike.
Did you hear that testimony?
A. Yes, sir.
Q. Was the account Mr. Heinrich gave of that correct?
A. Yes, it was correct.

Q. You were there, were you?

A. Yes, sir, I was there.

Q. Now there was testimony by Miss Sherbon. Do you know her?

A. Yes.

Q. That you called a meeting of the girls in your department, in the cut wheat room, I believe they call it?

A. That is right.

Q. To talk about unions. Is that true?

A. Yes, that is true.

Q. Well, tell us the circumstances about it.

A. Well, there seemed to be two groups in the department who were having trouble at the time; that is, it wasn't trouble. It was a lot of turmoil, you know. So the girls—we had been accustomed to having these meetings at all times, maybe every week, maybe every two weeks, to settle problems in the department. Rather than to tell one girl [fol. 827] at a time, I would get—we would all get together and talk it over.

Well, several of the girls asked me question that I couldn't answer. So they asked would it be all right if we would get together as usual and let them talk these things over. Well, one afternoon we did, but the debate was between two girls. I had nothing to say there.

Q. What girl spoke?

A. Well, Viola Snyder and Angela Brezka.

Q. For which organization did Viola Snyder speak?

A. She was against the union.

Q. Against the A. F. of L. union?

A. Yes.

Q. And in favor of the Heinz Association?

A. That is right.

Q. And the Brezka girl spoke in favor of the Federation?

A. There was one girl that seemed to be the spokesman for the others, in favor——

Q. One girl on each side spoke?

A. Yes.

Q. Is that right?

A. That is right.

Q. Did you express any opinion at all?

A. No, sir, I didn't.

Q. Did you ever at any time tell any girl that she should join one or the other of these organizations?

A. No, sir; I told them that they were free to do as they pleased and they were to decide for themselves.

Q. Were you at a meeting at which Mr. Heinrich warned the foremen and foreladies about interfering?

A. Yes, sir. Mr. Heinrich told me personally not to interfere in any way, and I was at a meeting once with Mr. Heinrich, when he spoke, and another meeting with Mr. Riley.

Q. Of the foremen and foreladies?

A. Foremen and foreladies, yes, sir.

Q. What is the substance of what they said at those meetings?

A. Well, Mr. Heinrich told us to keep hands off, that we were not to interfere in any way with what was going on unless, of course, it got so bad that there was too much interference with the work. Mr. Riley told us the same thing. He told us that the people were to decade for themselves, to settle that problem themselves. [fol. 828]

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb.

Q. Who asked you to call the meeting, this meeting in the cut wheat room?

A. Shall I name the girl or do you want——

Q. Yes.

A. Stella Price.

Q. Stella Price?

A. Yes. Mildred Heffler, and Mary Stasukevich.

Q. Can you spell that?

A. S-t-a-s-u-k-e-v-i-c-h.

Q. How did you know there was a lot of talking going on in this department?

A. Well, everytime I had my back turned, the girls were talking in groups. I knew there was something wrong. It was interfering with the work. The nature of the work that we have there requires all their attention.

Q. Was it unusual for the girls to talk among themselves?

A. Well, I wouldn't say it was unusual, but it was unusual for groups to talk.

Q. It was unusual?

A. Yes.

Q. You didn't know what they were talking about?

A. No, I didn't.

Q. You stated that you had attended a meeting addressed by Mr. Heinrich. I believe it was a meeting of the foreladies, foremen, or was it both?

A. It was foreladies and foremen, yes.

Q. Before the strike?

A. Before the strike, yes.

Q. Did you attend one after the strike?

A. Yes, but I also attend two before the strike.

Q. Two group meetings?

A. One by Mr. Heinrich and one by Mr. Riley.

Q. And did the one addressed by Mr. Riley occur before the one that Mr. Heinrich addressed?

A. Yes, it was before.

Q. Do you recall how long before?

A. Well, I should say a week or two before.

Q. What did Mr. Riley have to say?

A. He told us that the problem was for the employees to settle alone, that we were not in any way to interfere; that he had heard rumors that we may have said something, [fol. 829] and he told us not to.

Q. How long did Mr. Riley speak to the group?

A. Well, I couldn't say.

Q. Well, was it half an hour or an hour?

A. Well, I can't remember that.

Q. How long did Mr. Heinrich talk?

A. Well, Mr. Heinrich, I don't know.

Q. You don't remember that either?

A. Why, no, sir, I don't.

Q. How long did this meeting in the cut wheat room last?

A. About five minutes.

Q. Five minutes?

A. Yes, sir.

Q. You remember that, don't you?

A. Yes, I remember that.

Q. You have attended since you have been a forelady many meetings of foreladies, haven't you?

A. Yes.

Q. And Miss Weisman has generally been in charge?

A. Yes, she has.

Q. Were you instructed, you foreladies instructed by Miss Weisman or anyone else on the industrial relations' policy of the Heinz Company?

A. What do you mean by that?

Q. Well, about the labor problem and how you were to treat labor and that sort of thing, your attitude toward unions?

A. Our attitude has always been the same.

Q. What do you mean by that?

A. Well, we have never changed our attitude toward the people, the girls that worked in our department. We were always told that at the first—we were to investigate all complaints of girls at any time, at all times.

Q. Perhaps you misunderstand me. Haven't you, as forelady, ever been instructed in the past, even before this?

A. Yes.

Q. Even before this A. F. of L. business. Haven't you been instructed what your attitude toward unions should be or not be?

A. No, sir.

Q. You never were told anything about that, were you?

A. Well, what do you mean? Please explain.

Q. Were you ever instructed before the A. F. of L. [fol. 830] union was in the Heinz Plant, say last year or the year before last—were you ever instructed by any superior officers such as Mr. Heinrich, Miss Weisman, Mr. Riley, or any other superior officer as to what your attitude should be toward your employees with reference to unions?

A. You mean a year before or two years before?

Q. Yes.

A. Our employees were always satisfied. They never seemed to want a union.

Q. You never had that problem confronting you up until January of this year?

A. No, sir, we did not.

Q. Or later, is that right?

A. No.

Q. When did you first know that there was any problem of unions involved at the plant?

A. I didn't know until a few weeks before the strike.

Q. A few weeks before the strike?

A. Yes.

Q. How many weeks before the strike?

A. Why I couldn't say.

Q. The latter part of April, wasn't it, that you first learned of it, or was it the first part of May?

A. Well, around the latter part of April or the first part of May.

Q. How was it brought to your attention, Miss Gazzo?

A. Well, the turmoil in the department. Everyone seemed to be upset. I didn't know what it was all about.

Q. What brought to your attention the fact that the turmoil was about unions? How did you first know that the turmoil was about unions?

A. If you ever were in charge of a department, you would know how to get those. They seem just to come to you. Everybody was speaking about them.

Q. General rumor around the department?

A. Yes, but I didn't know what it was about. I knew something was wrong, but I couldn't find out what it was.

Q. And up to that time you had never, as a forelady, received any instructions from any superior about your attitude towards unions or labor organizations; is that right?

A. You mean a year before? No.

Q. Up to that time? At any time?

A. I don't quite understand that question. Would you [fol. 831] mind repeating it, please?

Q. Prior to this turmoil that you are talking about, any time prior to this turmoil, since you have been working for the company, have you ever received any orders or instructions from any superior officer about what your attitude should be towards unions or labor organizations among the Heinz employees?

A. Well, three or four weeks before, yes, when Mr. Heinrich—I was told that if there was any trouble, that we were to keep hands off.

Q. Four weeks before that?

A. Well, I don't know exactly, but it was before that, when this started.

Q. And state the occasion of Mr. Heinrich talking to you. Where were you and when did it occur and what did he say?

A. Well, I don't remember.

Q. Can you fix it as to month? Was it in April or in March or in February, or when was it?

A. No, sir; I can't remember that. That thing started so quickly, we didn't know what it was or what time it was or anything else.

Q. It started so quickly you didn't know how to stop it; isn't that right?

A. It was between the employees. We didn't know what was going on until all of a sudden it sprang up, that is all.

Q. But prior to that time, Mr. Heinrich talked to you individually. Were you given any instructions about what your attitude should be toward your employees with reference to unions or labor organizations?

A. Well, there hadn't been any occasion for him to speak to me about that or to us.

Q. Then am I to understand that you never did have any instructions prior to that time from anybody?

A. Well, if you mean the year before, no, or six months before, no, sir.

Q. How about two years? How about during N. R. A.?

A. No, sir, we had no trouble.

Q. No instructions?

A. No instructions.

Q. Are we to understand, then, that the Heinz Company never had meeting of foreladies and foremen in the past to tell them what their labor policy will be?

A. We never had any trouble with unions. All the employees seemed to be satisfied.

[fol. 832] Q. Up until this year?

A. Yes, up until 1937.

Mr. Kleeb: That is all.

Mr. Reed: That is all.

(Witness excused.)

Mr. Reed: Josephine Malik.

JOSEPHINE MALIK, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. You are Josephine Malik?

A. Yes.

Q. Are you employed by the Heinz Company?

A. I am.

Q. And you work in the department of which Miss Gazzo, the preceding witness heads; is that right?

A. I do.

Q. What is your job?

A. I am desk girl in the cereal department, and I relieve girls and if they want to go to the wash room, I take their places, or if anything else turns up that I have to take their places, why, I am told to do so.

Q. That is, you go to the various machines and relieve the girls?

A. Yes.

Q. Also you keep time, don't you?

A. I do.

Q. You are an hourly employee, are you?

A. I am.

Q. Now, you heard Miss Gazzo's testimony about this meeting of the girls?

A. I have.

Q. Were you there?

A. Not all the time.

Q. Were you in the meeting part of the time?

A. Yes, I have been.

Q. Do you know who spoke?

A. Yes, I been there when the two girls spoke.

Q. Which one spoke? Which girl spoke?

A. Viola Snyder and Angela Brezka.

Q. Now, did Miss Gazzo express any opinion one way or the other?

A. No, she hasn't.

[fol. 833] Q. She didn't say anything at the meeting?

A. No, she hasn't.

Trial Examiner Walsh: Did you say "no"? Did you answer that question? Did you answer that question "no"?

The Witness: Yes.

By Mr. Reed:

Q. Was there turmoil between the girls prior to that meeting?

A. Well, the two girls—the two girls seemed to express their different opinions of the different organizations and one spoke for the Employees' organization and the other for the A. F. of L.

Q. About how many girls were there?

A. Well, all the girls.

Q. Well, about how many is that?

A. 15.

Q. Now, before the meeting, had there been discussions and turmoil in the department?

A. Yes, sir.

Q. The girls were divided, were they?

A. Well, I don't know, but I know that they had been talking about these different organizations.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. You are a member of the association, aren't you?

A. Yes, sir.

Q. How long were you in this meeting in the cut wheat room?

A. Well, I don't exactly know, because I have to answer phone calls, and at the time I was there, it rang.

Q. So you don't know whether Miss Gazzo spoke or not, do you?

A. I don't remember.

Q. Well, if you weren't there all the time, she might have spoken when you weren't there, mightn't she?

A. Yes, that is true. She might have.

Q. Your job is timekeeper? And a relief operator?

A. That is right, general work.

Q. But your general job is timekeeper, isn't it?

A. Yes, sir.

Q. What?

A. Yes, sir.

Q. And that consists of doing what?

A. Keeping time, making out reports.

Q. Where?

[fol. 834] A. Keeping track of all raw materials.

Q. Where do you spend most of your time during the day?

A. At the desk.

Q. And where is that desk? What floor?

A. Fifth floor.

Q. Fifth floor of the cereal department?

A. Yes.

Q. And most of your time is spent at that desk working over records, isn't it?

A. That is right.

Q. And it is just occasionally that you are assigned to relieve a girl?

A. No, that is every day.

Q. Well, I mean occassionally during the day?

A. Yes, sir.

Q. You are not there a long period of time?

A. Well, it takes me a little over an hours time.

Q. But the majority of your working day is spent at the desk doing your timekeeper's job; isn't it?

A. Uh-huh.

Q. Will you speak when you answer?

A. Yes, sir.

Q. And if you are not there, you are at a machine relieving somebody?

A. That is right.

Mr. Kleeb: That is all.

Mr. Reed: That is all.

(Witness excused.)

Mr. Reed: Catherine Hildebrand.

CATHERINE HILDEBRAND, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Your name is Catherine Hildebrand?

A. Right.

Q. And you work at the Heinz Plant?

A. I do.

Q. In what department do you work?

A. Advertising stock.

Q. Where did you work prior to the strike?

A. Spaghetti filling department.

Q. How long have you worked at Heinz?

[fol. 835] A. 13 months.

Q. Now, there was a witness Fairly, Edwin Fairly, a man who testified that he saw you soliciting members for

the Heinz Employees Association in the spaghetti department during working hours. Is that true?

A. That is true.

Q. How long did you solicit during working hours?

A. About three-quarters of an hour.

Q. Then what happened?

A. I was stopped.

Q. Who stopped you?

A. Mr. Heinrich.

Q. What did he say?

A. He told me that that business wasn't for working hours, that I should confine all of that business to before and after work and lunch hours, but I wasn't allowed to do it during working hours.

Q. After that did you solicit during working hours?

A. I did not.

Q. You were active in the association, weren't you?

A. I was.

Q. And you still are, are you not?

A. I still am.

Q. There was a witness Kos, Sophie Kos, who testified that you forced her to sign a membership blank in the association. Is that true?

A. That is not true.

Q. What *you* you say to the girl whom you solicited?

A. I went up to Sophie and I asked her if she cared to join the Heinz Employees Association. I says, "It is an association sponsored by the employees of the Heinz Company. It is in no way connected with the C. I. O. or the A. F. of L., and has nothing to do with the Heinz Company. It was entirely up to the Heinz Employees." I said, "Do you care to sign?" And at first she refused.

Q. Did she later sign?

A. She did, of her own free will.

Q. Did you ever tell anybody that they had to sign?

A. I did not.

Q. Did the management ever tell you that you had to get signatures or instruct you to get them or anything of that kind?

A. They did not.

Q. Were you ever approached during working hours to join the A. F. of L.?

A. I was.

[fol. 836] Q. By whom?
A. Andy Porack.
Q. Was he getting signatures during working hours?
A. He was.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. You had a petition, did you not?
A. I did.
Q. From whom did you get it?
A. Eddie Kranz.
Q. How did you happen to get it from him? Where were you and what occasioned him giving you a petition?
A. He came up to the spaghetti department.
Q. He doesn't work in that department, does he?
A. He does not.
Q. It was during working hours, wasn't it?
A. Yes, it was.
Q. Now, tell us what happened.
A. Well, he gave me the slip and told me that there were employees that had been there for quite a while, and being as that there were rumors that the A. F. of L. was trying to get in, that they were going to see if they couldn't organize an employees association, not a company union, but an employees association.
Q. Is that all he told you?
A. Why, I don't remember all he told me.
Q. He told you other things besides that?
A. He did.
Q. Did he have papers with him, petitions with him?
A. The only one I saw was the one he handed me.
Q. Were ther- any signatures on it when he handed it to you?
A. There was not.
Q. The petition you got from Eddie Kranz was like Board's Exhibit 7, wasn't it? (Indicating.)
A. That's right.
Q. Did you make any inquiries of him as to what this association was all about other than what he told you?
A. I did.

Q. What did you ask him?

[fol. 837] A. I asked him if it was a company union, and he says, "No." So then several girls made a remark to me that it was a company union, and I went back to him, and I asked him about it. And they said the company unions were not allowed. And he said that it was not a company union. And that is all I can remember of it, although there was more.

Q. Why because Eddie Kranz told you it was not a company union, did you believe that it wasn't?

A. Nobody else knew about it.

Q. What do you mean?

A. My foreman or forelady didn't know anything about it.

Q. How do you know they didn't?

A. Because when I went—had the paper, I went to them, and they told me I wasn't allowed to go around with it.

Q. What made you go to them with the paper?

A. Well, when I got the paper and went to the girls, they stopped me.

Q. Who stopped you?

A. The forelady.

Q. Who?

A. Ann Trasiack.

Q. Then you didn't go to the forelady?

A. No.

Q. You just said you did go to her because you thought it was a company union?

A. When I went to the girls, and she stopped me.

Q. What did she say to you?

A. She said that I wasn't allowed to go around with that paper.

Q. Why did you go around on company time?

A. Why, I didn't——

Q. In the first place?

A. I didn't know any different.

Q. Eddie Kranz told you to, didn't he?

A. Oh, no, he didn't.

Q. Why didn't you know any different? You know you are supposed to work and not go around on company time with petitions, don't you?

A. No, I didn't know that at the time.

Q. You didn't know it at the time?
A. No.
Q. What made you think that you could do that?
A. I don't know.
Q. You just thought you could.
[fol. 838] A. Sure.
Q. How many years have you worked at the Heinz Company?
A. 13 months.
Q. 13 months?
A. Right.
Q. And in 13 months' time, working there as a timekeeper, you thought you could go around to the employees?
A. I beg your pardon.
Q. And get signatures?
A. Not a timekeeper.
Q. What are you?
A. Right at the present time I am working in the advertising stock.
Q. What were you at the time you were soliciting signatures?
A. I was a machine girl.
Q. What do you mean "a machine girl"?
A. Worked on the line, on a machine.
Q. What department?
A. Spaghetti filling.
Q. Well, now, prior to this going around with these petitions, had you ever taken any papers around for signatures of girls in your department?
A. I had no cause to.
Q. And your job was at your machine, wasn't it?
A. Right.
Q. And what made you think that you could leave your machine and approach other girls that were working and ask them to sign a petition which Eddie Franz gave you?
A. I don't know.

Mr. Kleeb: That's all.
Mr. Reed: That's all.

(Witness excused.)

Mr. Reed: Katie Griebel.

KATIE GRIEBEL, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. You work at the Heinz factory?

A. Yes, sir.

[fol. 839] Q. You are a forelady, are you?

A. Yes, sir.

Q. What department?

A. Bean-packing.

Q. How many girls do you have working there?

A. At the present time, 24.

Q. How long have you been employed by the Heinz Company?

A. 42 years.

Q. A witness, Mike Vilah, testified here; do you know him?

A. Yes, they told me the other day who he was. He works in the bean-baking.

Q. He testified that one day Viola Gable was going around in your department soliciting signatures for the Heinz Employees' Association in full view of yourself and Mr. White, that you made no objection. Is that true?

A. Not true.

Q. Did you ever permit the solicitation of names for any petition on company time?

A. No, sir.

Q. Did you ever interfere with it?

A. I did not. We wasn't supposed to. Mr. Heinrich told us to keep our mouth shut. We wasn't allowed to interfere with that.

Q. Did you ever tell anybody they had to join the association or union?

A. I did not. That was their free will.

Q. Did you ever tell anybody they would lose their job if they didn't join?

A. I did not; I had no right to.

Q. There was a Victor Lukans that testified that you threatened the girls they would lose their job if they didn't sign up and that you went around the department asking them to sign, after the one girl had failed to get any names. Is that true?

A. That isn't true.

Q. Did you hear any reports from any of the girls about losing a petition that they had signed?

A. Viola Gable reported to me, one noon hour, when I come back, she said, "Katie, our paper is gone."

And I said, "What paper?".

She told me, and we notified Mr. Locke.

Q. Was it on that occasion that he called the meeting?

A. That's why he called the meeting.

Q. Were you in the meeting?

[fol. 840] A. Yes, sir.

Q. Did you hear Mr. Locke's testimony this morning?

A. Yes, sir.

Q. You heard the paper he read on the stand?

A. Yes, sir.

Q. Is that what you recollect as about what he said?

A. Correct.

Q. Did you see Frank Novak in the department?

A. Frank Novak come in from the other department and passed, and he said something, I couldn't recall what he said, and Mr. Locke said, "Wait here, Frank. Come on over here and listen to me." He would not listen; he kept on a-going.

Q. Was Mr. Locke standing anywhere that he could see who signed that paper, after the meeting that day?

A. After the meeting was done Mr. Locke went. I think he went to the fourth floor; I am not sure; but he wasn't around then when they signed.

Q. Were you watching them sign?

A. No, sir. I went back to the work.

Q. Did you have any more trouble with lost papers after that meeting?

A. As far as I know, not. See, I didn't interfere with that paper.

Q. Prior to that meeting had there been trouble in the department between the girls about unions?

A. No- that I know of.

Mr. Reed: Cross-examine.

Cross-examination.

By Mr. Kleeb:

Q. Did you report to Mr. Locke about the paper?

A. Yes, sir.

Q. What did you tell him?

A. I told him the girls told me the paper was gone, what they had.

Q. The paper was gone?

A. Yes, it was gone.

Q. You didn't tell him that it was lost?

A. Either it was gone or lost. They didn't have it any more. Do you understand?

Q. Yes.

A. Yes.

Q. If it was gone, they didn't have it any more?

A. Yes. The fellows took it.

[fol. 841] Q. How many years have you been a forelady?

A. About 28.

Q. Besides you and Mr. Locke being present at that group meeting when Mr. Locke spoke to the employees, what other foremen or foreladies were present?

A. Why, I think Mr. White was the only foreman that was there.

Q. John D. White?

A. Not John, Dave.

Q. Dave White?

A. Yes, sir.

Q. And yourself and Mr. Locke?

A. Yes, sir.

Q. Did you observe whether Mr. White remained among the employes after Mr. Locke left?

A. I could not tell you, but there wasn't anyone I seen around the desk but the girls; a few girls, that's all.

Q. Before this year and since you have been forelady have you attended any foremen's and foreladies' meetings wherein the management or the officials of the company told you what their labor policy was?

A. Why, yes, I did.

Q. When?

A. When they had them, years ago; ever since they started. I couldn't tell you how many years ago.

Q. What did they tell you their labor policy was?

A. Well, what they tell us is generally what goes on and what we are to do.

Q. What did they tell you you were to do?

A. They tell us to keep close to the girls and ask them different things, how they feel about their work, and dif-

ferent things; work right with them. That's in our meetings.

Q. In other words, your superiors would tell you foreladies to always keep close to the girls?

A. Close to them; you ought to always keep close to your workers.

Q. And make sure they are satisfied?

A. They are satisfied. When they are not satisfied, we take it further; see what we can do about it.

Q. If a girl should complain to you about your working conditions or hours you are supposed to take it up with the management, or keep them satisfied?

A. That's it. We always were satisfied until 1937.

[fol. 842] Q. Until this year?

A. Until this year.

Q. The employees were always satisfied until this year?

A. Always satisfied, the group we had down there.

Q. And you did your best to keep close to your girls?

A. I did, always; try.

Q. And to keep them satisfied?

A. I did.

Mr. Kleeb: That's all.

(Witness excused.)

Mr. Reed: Viola Gable.

VIOLA GABLE, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. I believe you work in the bean-packing department at the Heinz factory; is that right?

A. Yes, sir.

Q. How long have you worked there?

A. Two years.

Q. Where do you live?

A. 1947 Mt. Troy Road.

Q. And you work for Katie Griebel, the woman who was just on the stand, do you?

A. Yes, sir.

Q. I believe you had a petition of some kind in that department that disappeared or was stolen, didn't you?

A. Yes, sir.

Q. How many names were on it at the time, if you know?

A. I don't know, I don't remember.

Q. What happened? Tell us how that disappeared. Before you do that, did you report that fact to Miss Griebel?

A. Yes, sir, I did.

Q. You told her it disappeared, did you?

A. Yes, sir.

Q. And you told her how it happened, did you?

A. I explained to her what had happened.

Q. Now, what did happen?

A. Well, I had the paper and there were a bunch of girls and I was trying to get the paper signed up and who comes [fol. 843] in but Frank Novak and a bunch of fellows and they all jumped on me. Frank Novak came up and put his hands against my neck and he said, "Do you know what they ought to do to you?" He said, "Do you know you are violating the Wagner Act?"

And I got scared, I started to cry. I didn't know what was going on. A bunch of men in front of me, and then, when it was time for the whistle to blow, I looked for my paper, and it was gone.

Q. This was at lunch hour?

A. Yes, sir.

Q. Did you ever see the paper again?

A. No, sir, I didn't.

Q. You don't know who got it?

A. I don't know where it disappeared.

Q. Did he say something to you about he ought to wring your neck, or something like that?

A. He said, what they ought to do, he motioned by my neck; that's what they ought to do to me, wring my neck.

Q. And it was after that Mr. Locke called this meeting, was it?

A. Yes, sir.

Mr. Reed: Cross-examine.

Cross-examination.

By Mr. Kleeb:

Q. Did this wringing-your-neck process occur in the ladies' lunchroom?

A. No, sir, it was in our own department, bean-packing.

Q. You were getting ready to resume work, were you? That is, you were ready to start work in the afternoon?

Q. You were waiting for the whistle to blow?

A. Yes, sir.

Q. Now, what did you understand that this paper was all about? Did you have the paper before you reported its disappearing? Did you have it in your possession?

A. Yes, I had it.

Q. What were you doing with it?

A. Well, I was trying to get members to join the Heinz Association.

Q. Who gave you the paper?

A. John Ubrey.

Q. And when did he give it to you?

A. The day before. He passed the department and he [fol. 844] gave it to me.

Q. He went through your department?

A. Yes, sir.

Q. He doesn't work in your department, does he?

A. No, sir.

Q. But he went through while you were working?

A. Yes.

Q. Why did he pick on you? Do you know?

A. I don't know. You will have to ask him.

Q. You don't know why he chose you?

A. No, sir, I don't.

Q. Of all the girls there he walked up to you and asked you to handle the petition?

A. Yes, sir.

Q. What did he say when he asked you?

A. He explained about the association and asked me to see if I could get members to join it.

Q. To counteract the outside organization, the A. F. of L., is that it?

A. No, sir. He didn't say anything about the A. F. of L.

Q. Did he tell you how you were to get signatures; when you were to do it?

A. He told me nothing about when I should get them.

Q. Did he tell you whether you should do it during working hours?

A. No.

Q. You did get signatures during working hours, didn't you?

A. Yes.

Q. How long have you been working for the Company?
A. Two years; more, but I was laid off.
Q. But you have put in four years' service?
A. Yes.
Q. Did you ever, on any other occasion, leave your work and go among employees and get signatures for organizations?
A. No, sir.
Q. That was the first time?
A. Yes.
Q. And by what authority did you think you could leave your work and solicit signatures for the association?
A. I don't know.
Q. You don't know why? You just did it?
[fol. 845] A. Yes.
Q. John Ubrey didn't tell you you could do it, did he?
A. No, sir.
Q. Nobody told you you could do it?
A. No, sir.
Q. You just did it?
A. Just did it.
Q. This was an employees' association, wasn't it?
A. Yes, sir.
Q. Why did you think it was any of the forelady's business whether that thing disappeared or didn't disappear?
A. Well, our forelady and our foreman are always ahead of us. It's up to us to tell them what to do—not to tell anybody else; they are the ones that are going to help us, so I told her.
Q. And you thought it was important to the forelady that the signatures to the association were missing?

Mr. Reed: I don't think that's a fair question.
A. Well, I just thought——
Trial Examiner Walsh: Just a moment.
Mr. Reed: It seems to me it is not cross-examination. He is arguing with the witness. He said what the facts were and what she thinks hasn't anything to do with it.
Trial Examiner Walsh: Objection sustained. You need not answer that question.

By Mr. Kleeb:

Q. But you did go to the forelady and report the petition was missing, didn't you?
A. Yes.

Q. You don't know what happened to it, do you?
A. I don't.
Q. You saw no one take it?
A. No.
Q. You saw no one tear it, did you?
A. No.
Q. You saw no one put it in their pocket?
A. No.
Q. You just don't know what happened?
A. I don't know what happened to it.
Q. How many signatures did you have?
A. I don't know; about six or seven, I think.
Q. When you got these—Strike that.
Were you told what you were to do with the petition after you got signatures on it?
A. To give it back.
[fol. 846] Q. To John Ubrey?
A. Yes, sir.
Q. Then he did tell you something else, didn't he? he told you that, didn't he?
A. Yes.
Q. Did you pick up the signed petition that was signed after Mr. Locke made his speech? Did you take care of that petition?
A. No, I didn't.
Q. Who did? Do you know?
A. Mr. Locke read on the paper, Marie Ball.
Q. That Marie Ball was to have charge of that petition?
A. Yes.
Q. But up to that time, up to the time the first petition disappeared, which Mr. Ubrey gave you, you had charge of the petition, didn't you?
A. Yes.
Q. Then, when Mr. Locke made his speech, in his speech he said that this Ball girl would have charge of the petition; is that right?
A. Yes, sir.
Q. Do you know what caused that change, from you, that the Ball girl should have charge of the petition?
A. No, I don't.
Q. To identify the petition you had I show you Board's exhibit 7. Will you look at it? That's the kind of a paper John Ubrey gave you, isn't it?
A. Yes, sir.

Q. Do you know what happened to the petition—is it Marie Ball or Mary Ball?

A. Marie Ball.

Q. Do you know what happened to that petition that was signed that day?

A. No, I don't. All I did was sign it and went back to work.

Q. You never saw it again?

A. I never saw it again.

Q. You don't know what the association did with it, do you?

A. No, I don't.

Mr. Kleeb: That's all.

Trial Examiner Walsh: Just a moment.

Examination.

By Trial Examiner Walsh:

Q. When Mr. Ubrey gave you this petition he told you [fol. 847] go around and get signatures at once?

A. No, he just gave it to me and told me to get names for it, that's all.

Q. Did he say, "Wait until quitting time"?

A. He didn't mention what time to get it.

Q. He didn't say, "Don't wait until quitting time"?

A. He didn't say anything like that.

Q. Did you ask Miss Griebel about it?

A. No, I didn't.

Q. You didn't consult her as to whether or not you might leave your work?

A. No, I didn't.

Q. Just what is the nature of your work?

A. I inspect on the machine.

Q. Is it a work that goes on continuously?

A. Yes, it keeps on going.

Q. For example, when you go to the restroom or the washroom during the day, does someone take your place?

A. Yes, my operator or a general girl.

Q. How do you arrange that?

A. It's very easily.

Q. How?

A. The girl operates and watches at the same time.

Q. Do you go to her or do you go to Miss Griebel?

A. I go to her.

Q. And in this case when you took this petition around to get names signed to it did you go to her and tell her to take your place?

A. To my operator?

Q. Yes.

A. She is right there. She works right beside me.

Q. And you just told her you were going to leave and she should do your work?

A. Yes.

Q. Did you explain to her why you were leaving?

A. No, I didn't.

Q. After the whole incident was over did anybody speak to you about having left your work for this purpose, getting signatures to the petition?

A. I didn't hear you.

Q. After the petition you had taken around and secured some signatures on was lost, and then the meeting of the girls was held, another petition was circulated, or the girls were given a chance to sign it, and the whole incident was over, did anybody say anything to you about your hav- [fol. 848] ing taken time from your work to get signatures to that petition which was lost?

A. I don't remember.

Q. You don't remember? You mean it's possible somebody did?

A. No, nobody did.

Q. Nobody did? Miss Griebel did not and Mr. Heinrich did not; up to the present time nobody has ever reprimanded you about leaving your work for this purpose?

A. No, sir.

Mr. Kleeb: If the Examiner please, I would like the record to show that the witness is nodding "No" to each of those questions.

By Trial Examiner Walsh:

Q. It's understood, Miss Gable, that the answers to the last questions were "No"; no one has, up to the present, reprimanded you for leaving your work and securing signatures to the petition. Your answer is "No"?

A. No.

Mr. Reed: I don't know whether she know- what "reprimanded" means.

The Witness: I know one time Mr. Locke told me not to do anything like that, but I don't know if you meant at that time, or anything like that——

By Trial Examiner Walsh:

Q. That's what I meant.
When did Mr. Locke say anything to you?
A. I don't remember. I don't know.
Q. It's since this petition business occurred; is that right?
A. Yes.
Q. What did he say to you?
A. I don't remember. He just told me, "Viola, don't take anything around like that any more." I don't know; I don't remember.
Q. Miss Griebel did not say anything to you?
A. She didn't say anything.
Q. Mr. Heinrich has not said anything to you?
A. No, sir.
Q. Just Mr. Locke, and he said you shouldn't do anything like that again?
A. "Don't do anything like that," when I am working there.
Q. He didn't tell you why?
A. No.
Q. Just said that and nothing more?
[Vol. 849] A. That's all.

Trial Examiner Walsh: That's all.

Recross examination.

By Mr. Kleeb:

Q. Have you attended the association meetings regularly?
A. Not regularly.
Q. A lot of them, or just a few of them?
A. A few of them.
Q. Have you paid your dues regularly?
A. Yes, sir.
Q. How much are the dues?
A. $2 a year.
Q. Do you know who is secretary of the association?
A. I believe it's Mohl, Mr. Mohl.

Q. Can you name the other officers of the association?
A. Well, I know Mr. Bennett is president.
Q. I. C. Bennett or C. I. Bennett?
A. I. C. Bennett, but I don't know who the vice president is.
Q. You don't know who the vice-president is?
A. I think——
Q. Who is treasurer?
A. I don't know.
Q. Does your association have a constitution?

Mr. Reed: This is objected to as not cross examination.
Trial Examiner Walsh: Sustained.
Mr. Kleeb: That's all.
Mr. Reed: That's all.

(Witness excused.)

Mr. Reed: Mr. D. M. White.

D. M. White, a witness called by and on behalf of respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. You are D. M. White, are you?
A. Yes, sir.
Q. You are a foreman in the bean-packing department, I believe?
A. Yes, sir.
Q. And how long have you worked over at this Pittsburgh [fol. 850] plant?
A. Three years.
Q. How long have you worked for the Heinz Company altogether?
A. I first started in 1924.
Q. What kind of a room is it in which your department operates? Is it a big room?
A. Yes, quite a large room.
Q. With a row of machines in it, is there?
A. Yes, sir.

Q. Now, there is testimony here by a man named Ahel, Matt Ahel, I believe, that Viola Gable went around to the various girls in the bean-packing department circulating a petition during working hours to get signatures for the Heinz Association, and that was done in full view of yourself and Miss Griebel.

Did you ever see anything like that going on?

A. I did not.

Q. You have two floors, I believe, to look after?

A. Yes, sir.

Q. And Miss Griebel is in that one department?

A. Most of the time, yes, sir.

Q. Did you ever see anyone circulating a petition from girl to girl during the working period there?

A. Not a petition, no, sir.

Q. Was that forbidden?

A. Why, we had never had any definite instructions as to say anything to them. We were told to keep our hands off altogether.

Q. Off the unions?

A. Yes.

Q. And did you ever try to influence anybody or tell them to join one association or not to join another?

A. No, sir.

Q. A witness, Mr. Lukans, testified that you asked him to sign a petition. Is that true?

A. Yes, it is.

Q. What happened there?

A. Well, after Mr. Locke's speech, after this other petition had been stolen or destroyed or something happened to it, why, after the meeting broke up and the people were signing up and going back to their jobs, I saw Victor standing quite a ways away, and I just walked over to him and I could tell he was burning up about the whole thing, and I looked at Victor and I said, in a joking way, "How about you, Vic?" or "How about you, Victor?" or something to that effect.

[fol. 851] Q. Was he well known to be a union advocate?

A. Yes, sir.

Q. He belonged to the A. F. of L., did he?

A. We thought he did, anyway.

Q. He talked it around there, didn't he?

A. Yes.

Q. You don't think he took that as your trying to influence him, do you?

A. Why, absolutely not.
Q. Were you laughing when you said it?
A. As I remember it, I was, yes.

Mr. Reed: Cross examine.

Cross examination.

By Mr. Kleeb:

Q. What did you mean when you said, "We thought he belonged to the A. F. of L."; Mr. Lukans?
A. Just what I said.
Q. What do you mean by "We thought he belonged"? Who are "we"?
A. Who are "we"?
Q. Yes.
A. Well, the department; myself and Miss Griebel.
Q. That's what you meant when you used the word "we"?
A. Yes.
Q. And you say, "We thought he belonged." When did you mean? Was it you and Miss Griebel? Why did you think he belonged to the A. F. of L.?
A. Well, he had specifically talked about the A. F. of L.
Q. So your thoughts on the matter were based on what he had said?
A. Sure.
Q. Is that what you mean?
A. Yes.
Q. Was this Viola Gable, or the previous witness, in your department at that time?
A. Yes, sir.
Q. She is not there now?
A. Yes, sir.
Q. Same department?
A. Yes, sir.
Q. What job does she have now?
A. Inspector on a labeling machine.
Q. And prior to the strike she was what?
[fol. 852] A. Inspector on a labeling machine.
Q. Same job?
A. Yes, sir.

Mr. Kleeb: That's all.

(Witness excused.)

Mr. Reed: Mr. David Simpson.

DAVID SIMPSON, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Mr. Simpson, you are employed by the Heinz Company, aren't you?

A. Yes, sir.

Q. You are a foreman, aren't you?

A. Yes, sir.

Q. In what department?

A. Both machine and millwright department.

Q. How long have you been employed by the Heinz Company?

A. About 26 years.

Q. Mr. Frank Novak testified the other day. You know him, do you?

A. Yes.

Q. He testified that he started to work in your department as a millwright about 10 o'clock one morning; that Mr. Heinrich came down to your department with you and that Mr. Heinrich had some kind of an argument with Novak about the amount of pay he was said to be making, and there was some conversation about his transfer to that department, as being an attempt to buy him out. Do you recall that incident?

A. Yes, sir.

Q. Will you state what happened?

A. I was called the day previous to that about Frank wanting to learn the millwright trade, and Mr. Heinrich said he would see me in the morning. I went up to his office and Frank was there, and we talked it over a little bit, a few minutes, and we went down to the shop.

I started him to work and, about an hour after that, why, I got all kinds of reports around the shop, bringing a new man down in the shop, and he was getting 85 to 90 cents an hour; more money than the skilled mechanics were making, [fol. 853] and that kind of got the fellows upset a little bit, so then I called Mr. Heinrich.

Mr. Heinrich said he would come right down. He did, in a little while. About 10 o'clock, I guess it was, and we went upstairs to the millwright shop. There was a fellow there, Arthur Ramming, works there in the experimental

machine shop, and we called him over, and there was a crate sitting there on the floor, getting ready for shipment, and Mr. Heinrich called Frank over and he said, "Frank, there are reports going around here that I gave you this job and gave you more money in order to buy you off. Now," he says, "I want you to tell right here what you are getting now," and Mr. Heinrich wrote on top of the crate the amount that he was making.

"Now," he says, "is that right, Frank?"

Frank says, "Yes, that's right."

Q. What was that he wrote?

A. 62½ cents.

Q. Did Frank then make any statement as to whether or not he had claimed he was being bought out, or whether he had made any statement like that?

A. He said then he was satisfied, that he didn't say that.

Q. You mean Frank Novak denied ever having said it?

A. That's right.

Q. You heard that?

A. That's right.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. You have been in the courtroom when Mr. Heinrich testified, haven't you?

A. Yes, I have.

Mr. Kleeb: That's all.

Mr. Reed. That's all.

(Witness excused.)

Mr. Reed: Arthur Ramming.

ARTHUR RAMMING, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Mr. Ramming, you work for the Heinz Company?

A. Yes, sir.

[fol. 854] Q. How long have you worked for them?

A. Nearly seven years.

Q. What is your job?

A. Machinist.

Q. Are you paid on an hourly basis?

A. Yes, sir.

Q. You are not a foreman or assistant foreman?

A. No, sir.

Q. Do you remember an instance when Mr. Novak and Mr. Heinrich and Mr. Simpson had a conversation about Frank Novak's transfer to the millwright department?

A. Yes, I remember distinctly.

Q. What happened?

A. Well, on that particular morning, on my way to work from the dressing room to the shop, we always stop outside on the street for a smoke, and in the group I heard someone make a statement that Frank Novak was given a job at 85 cents an hour to cease his union activities, and, of course, that sounded like a joke to me, and I didn't pay much attention to it, and didn't even stop to look around who said it, and when I got in the shop that morning I noticed that the millwright department—it's on the same floor I work—I saw Frank Novak working in the millwright department, and I wondered if that was the job he was offered, so I didn't say anything, but some time during the morning I saw Mr. Heinrich come up with Mr. Simpson.

I said, "Well, the best information I can get is right here." So Mr. Simpson and Mr. Heinrich approached me, and he said, "Have you heard anything about offering Novak a job?"

I said, "Yes. I am glad to come up here. I want to be straightened out on it." I said, "I heard he was getting 85 cents an hour", and Mr. Heinrich said, "Do you know how much he makes?"

I said, "No, I don't.

Well, then, he wrote on that crate "62½" and while he was doing that he called Frank over and Frank come over and he said, "I want you to tell this man how much you are getting."

Frank said, "62½."

And so then Mr. Heinrich said, "You were getting 57½ up until the time we all got this five-cent raise?"

He said, "Yes."

And he said, "You asked for a job where you could [fol. 855] learn a trade and eventually make more money?"

He said "Yes."

He said, "We gave you this job in the millwright shop?"

He said "Yes."

Then Mr. Heinrich explained to me Frank had started there about 14 years ago and then had taken some time out, possibly a couple years, to do some boxing, and then, during the depression, had come back again, and they put him back to work, and then he asked Frank, he said, "Frank, did you ever ask me for a job like this before?"

"No," Frank said, "no."

"Well, Frank," he said, "then you can't blame me." He said, "I will take half of the blame, but you will take the other half."

And that was the extent of that conversation. I went back to my work. I was satisfied. And then they left for —walked across the room, and that's the last I saw of them.

Q. You are active in the employees' association, aren't you?

A. Not at that time.

Q. You weren't at that time?

A. No.

Q. You are now?

A. I am now.

Q. You are a member of the bargaining committee of that association?

A. Yes, sir.

Q. I want to ask you some questions about that later, but in order to keep this in line that's all I want to ask you now.

Don't leave, however.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. What department did you say you were in?

A. Experimental machine shop.

Q. That is near the millwright department?

A. On the same floor; it's separated by a wire screen.

Q. And are you a machinist?

A. Yes.

[fol. 856] Q. You didn't hear Novak say Heinrich was trying to buy him out, did you?

A. I didn't hear Novak said it.

Q. I asked you that: You didn't hear Novak say that, did you?

A. He admitted to Heinrich that he wasn't being bought out.

Q. I didn't ask you that. I said you didn't hear Novak tell anyone or say Heinrich tried to buy him out?

A. No.

Q. You heard the rumor he was supposed to have been bought out?

A. I heard a statement.

Q. What is your hourly rate?

A. $1.01.

Q. $1.01 or $1.05?

A. $1.01 and a fraction.

Mr. Kleeb: That's all.

Mr. Reed: That's all, except don't leave the courtroom.

(Witness excused.)

Mr. Reed: Joseph Greenier.

Joseph Greenier, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Mr. Greenier, you are employed at the Heinz factory?

A. Yes, sir.

Q. How long have you worked for the Heinz Company?

A. Going on 19 years.

Q. What's you job?

A. Stacking stock.

Q. You are an hourly employee?

A. Yes, sir.

Q. Are you a foreman?

A. No, sir.

Q. You are not a foreman?

A. No, sir.

Q. Now, there was testimony here by a man named Koontz, [fol. 857] Frank Koontz, that you asked him to sign a Heinz Employees' Association petition, and you said if you sign it on one side it will be for the inside union and if you sign it on the other side it will be for the outside union. Will you tell us what the fact is about that?

A. I asked him to sign that for employees' association, run by the employees alone. When I talked to him I explained the whole fact and I said, "Listen, it's up to you. You have been an old-timer working with me all along and," I said, "it's up to you whether you want to sign or not." I said, "Regardless what happens, you do what you feel like. Do you want to sign?"

He said, "No.". So I put his name on the back, so he said, "What the hell are you doing that for?"

I said, "Wait a minute. I do that to know what men I went to. I don't want to go around to them all over again."

That was all that was said.

Q. So the writing of his name by you on the back of the slip was only your own memorandum of whom you had seen?

A. Yes; I explained that to him.

Q. Did anybody solicit you during working hours to join the A. F. of L. union?

A. Mr. Frank Koontz did about three weeks previous to that.

Q. What did he say to you?

A. He says, "Say," he said, "you know they are forming a union."

I said, "What union? What are you talking about? Get on that conveyor and shut up. Just the words I used.

He said, "No," he said, "we are fixing up for a union for the A. F. of L."

I said, "What is that for?"

He started to explain to me. I said, "No, I ain't interested." He said, "You better get in now. It will cost you $45 if you don't afterwards."

Q. Did Novak ever solicit you to join?

A. He did on several occasions on my way home.

Q. What did he say?

A. He said I will get in the A. F. of L. or else.

Q. You are still a member of the Heinz Employees Association?

[fol. 858] A. Yes, sir.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. Frank Novak works on a conveyor, doesn't he?

A. Frank Koontz works.

Q. Or Koontz, I mean.

A. Yes.

Q. Works on a conveyor?

A. He was at that time.

Q. At that time?

A. Yes, sir.

Q. And when he came to you, as you stated, about the A. F. of L., you told him to get back on that conveyor and shut up, didn't you?

A. That is all I told him; yes, sir, when he started mentioning union. Why, I told him to get back on the conveyor.

Q. And you gave him that order, didn't you?

A. That is what I told him.

Q. You gave him that order, didn't you?

A. Sure, I did.

Q. Yes. In other words, you have a right to tell him that?

A. No, sir; I have no right to tell anybody anything, but that stuff continually comes down from the bottling works. The minute he gets out of there, the stuff jambs. There will be damage.

Q. What right have you got to tell his where to get?

A. I told him that so we wouldn't have no damage around there. We would have the blame for any damage done.

Q. You would be responsible for the damage, wouldn't you?

A. Everyone of us would.

Q. What do you mean, "everyone of us would?"

A. The four of us on that floor.

Q. You are a group leader, aren't you?

A. Yes, sir; that is, a gang leader.

Q. What?

A. A gang leader. Well, you would call it a group leader. It is the same.

Q. How many men do you lead?

A. There is three other men besides myself.

[fol. 859] Q. And who are they?

A. Frank Koontz, he was on the conveyor, a man by the name of Joseph Curley, and another man by the name of Bohoritz.

Q. So, being a group leader, that is the reason you told Koontz to get on the conveyor and shut up?

A. Yes, sir.

Q. Because you are responsible for that production?

A. We would all be responsible for it.

Q. And you are responsible for those three men's work?

A. In a way, yes.

Q. Yes. What do you get an hour pay?

A. Do I have to answer that?

Q. I am asking you what you get.

Mr. Reed: If the Court please, I object to this. It is not cross examination. The witness was asked nothing about that, and this is nothing but a malicious attempt to make trouble among the employees by making everyone disclose his wages.

The Witness: On this proposition——

Trial Examiner Walsh: Just a moment.

The Witness: Why ask about a personal affair?

Trial Examiner Walsh: Just a moment.

Mr. Kleeb: Just a moment.

I resent the insinuation of Mr. Reed that I am engaged in any malicious attempt to do anything like he insinuated. I certainly think I can ask these leaders of the association what they make to show that it is so much greater than what the people under them in the rank and file make.

Mr. Reed: There is no such allegation or charge in this case at all.

Mr. Kleeb: But it certainly is material to show interest, and as Mr. Reed says, interest is always material.

Trial Examiner Walsh: Objection overruled. You may proceed.

You may answer the question.

A. 71½ cents an hour.

By Mr. Kleeb:

Q. Sir?

A. 71½ cents an hour.

Q. From whom did you get the association petition to circulate?

A. Mr. John Ruppert.

Q. Ruppert?

[fol. 860] A. Ruppert, yes, sir.

Q. And who is John Ruppert?

A. He is one of our representatives. He came to the dining room at dinner time and came to the table I was eating my lunch. And he asked me—and I said, "What is it, a Communist idea?"

He explained the whole works. When I found that out, and as long as I have been with the company, why, I naturally went with them.

Q. Into the company——

A. No, I was looking for my job, not the company. That is one thing I insisted on for him to explain, because the company has anything to do with it. He said, "No."

Q. Then what do you mean, then, so l-ng as you have been with the company and to protect your job you went along with them?

A. Because I am satisfied with my work, and being that all the old timers was trying to start this, why I was right with them.

Q. You knew the company would be satisfied with an association like that?

A. No, sir; I didn't say any such thing.

Q. Why is it that you were willing to go along, then, because you wanted to keep your job?

A. For the simple reason why, I would sooner have what they call a bargaining basis, or whatever you want to call it, by an old timer who knows what the work is about.

Q. But it is my understanding, Mr. Greenier, that the employees have always been satisfied at the Heinz Company?

A. Yes, sir.

Q. Why would you go along with the association if you were satisfied?

A. Because the way the other fellows was coming after me about the A. F. of L., I seen they was trying to have a union there.

Q. You knew the company wouldn't like the A. F. of L., didn't you?

A. I didn't know no such a thing. I thought it myself, not the company, at that time.

Q. And by thinking by yourself, you decided to do what?
A. I decided that I would go ahead with them.
Q. With whom?
[fol. 861] A. With the old timers, the Employees Association.
Q. Why?
A. For the simple reason, we have our own bargaining agency.
Q. Why do you think that that was the better thing to do?
A. For the simple reason if the man could understand the work, why, he can do better.
Q. What?
A. A man that understands the work, he can go and bargain for anything that comes along, understands the position, if it is a job of grievance or what the case might be.
Q. And that is the reason you went along with the association?
A. Yes, sir.
Q. How long did Ruppert talk to you about this petition?
A. We was talking all through dinner hour.
Q. Did he give you a blank petition to get signed?
A. Yes, sir.
Q. Did he?
A. Yes, sir.
Q. And did you take it back to your department and solicit signatures?
A. Yes, sir.
Q. And were you stopped by any foremen?
A. No, sir.

Mr. Kleeb: That is all.
(Witness excused.)
Mr. Reed: Frank Kropf.

Frank Kropf, a witness called by and on behalf of the Respondent, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Your name is Frank Kropf?
A. Yes, K-r-o-p-f.

Q. How long have you worked for the Heinz Company?
A. 34 years.
Q. 34 years?
A. Yes, sir.
Q. Where do you live?
[fol. 862] A. 46 Glenmore Avenue, Westfield.
Q. You are a foreman?
A. Yes.
Q. What department?
A. Vinegar distillery, vinegar distillery.
Q. Now, there is an employee named Aloise Lukitsch in your department, isn't there?
A. Yes.
Q. Mr. Lukitsch testified that on one occasion you said to him that if he didn't join the outside union, he wouldn't have any job there; is that true?
A. No.
Q. Did you ever make that statement to him?
A. No. We never was so good friends for a couple of years that we talk things like that. It was about two or three years we never was friends together.
—. Well, did you ever make that statement to any employee?
A. Never.

Mr. Reed: Cross examine.
Mr. Kleeb: That is all. No cross-examination.
Trial Examiner Walsh: That is all.

(Witness excused.)

Mr. Reed: Mr. Schultz. Alex Schultz.

Alex Schultz, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Mr. Schultz, you are foreman in the paint department; is that right?
A. Yes, sir.

Q. How long have you worked in the Heinz Plant?

A. A little over 30 years.

Q. Where do you live?

A. 41 Sylvania Avenue, Pittsburgh.

Q. You have an employee named Markus in your department?

A. Yes, sir.

Q. Well, Markus testified that in 1937 you said something like this to him: You said, "A certain person has been around in the plant, and why didn't you sign a [fol. 863] paper?" He said, "I couldn't sign in two places. I did sign on the outside."

And then you said, "Probably some of these days you might lose your job on account of that." Did you make that statement to him?"

A. No, sir.

Q. Did you ever make a statement to any employee that he might lose his job?

A. No, sir.

Q. Did you ever tell them what union to join or what union not to join?

A. No, sir.

Mr. Reed: Cross examine. Oh, one more question.

By Mr. Reed:

Q. You had some trouble with Markus about chewing tobacco at work, didn't you?

A. Yes, a couple of years ago.

Q. That is forbidden?

A. That is right. That is our standard rule.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. You are very much indebted to the Heinz Company, aren't you?

Mr. Reed: This is objected to as improper cross-examination.

Trial Examiner Walsh: Sustained.

By Mr. Kleeb:

Q. When were you made foreman?
A. Seven years ago. You mean in the paint shop?
Q. Yes.
A. Seven years ago.
Q. And before that you were a labor boss, weren't you?
A. Yes.
Q. Are you a painter by trade?
A. Yes, sir.
Q. Were you a painter by trade when you were a labor boss?
A. Yes, sir.
Q. You have a brother in the cereal department, don't you?
A. Yes, sir.
Q. You have a brother-in-law in the pickle department, don't you?
A. That is right.
Q. You have a daughter in the general office, don't you?
[fol. 864] A. That is right.
Q. A nephew in the machine shop, don't you?
A. Yes.
Q. And a boy friend of your daughter's works in your own department?

Mr. Reed: This is objected to as improper cross-examination. So are the last few questions, but I didn't object.

Mr. Kleeb: I think it is material. If the trial examiner please, I think it is material just to show the devotion this witness should have to the Heinz Company. They have done a lot for him and his family. I think it is to show his——

Trial Examiner Walsh: Your objection is to the last question?
Mr. Reed: Yes.
Trial Examiner Walsh: Sustain the objection.
Mr. Kleeb: That is all.
Mr. Reed: That is all.

(Witness excused.)

Mr. Reed: Robert Andrews.

ROBERT ANDREWS, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Your name is Robert Andrews, I believe?

A. Yes, sir.

Q. You are a mechanic in the soup department of the Heinz Factory?

A. Yes.

Q. Do you know a witness named Lukitsch who testified here?

A. Yes, sir.

Q. He testified that on one occasion you had a Heinz Employees Association petition in a cupboard in the noodle soup filling department, and that you were going to the various girls in that department during working hours [fol. 865] and taking them over, a few at a time, to sign that petition in the cupboard. Is that right?

A. That is not true.

Q. You are a member of the Heinz Employees Association, are you?

A. Yes, sir.

Q. You were soliciting signatures to the petition?

A. Yes, sir.

Q. What is your job?

A. Mechanic.

Q. And what does that require you to do?

A. Well, to keep the machines running.

Q. Does your work take you from one machine to another?

A. Yes, sir; I have to check over the scales that the girls weigh noodles on and things like that.

Trial Examiner Walsh: I am not quite hearing you. Speak a little bit louder. Will you answer that question once more?

The Witness: I have to go from—the girls weighing noodles, I have to go from one scale to the other and keep them adjusted so they wouldn't swing too much, and things like that. If any machine breaks down, I have to go and fix it.

By Mr. Reed:

Q. You are an hourly employee?

A. Yes, sir.

Q. Would it be possible to take a girl away from the machine without breaking down the production line?

A. No, sir, each girl is needed.

Q. Did you take any of them over to the cupboard to sign up this petition?

A. No, sir.

Q. Did you take any of the girls away from their work at any time to sign the petition?

A. No, sir.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. How many machines are there in the soup department that you are responsible for?

A. Now or at that time?

Q. At that time?

A. There was two lines. It was different machines to a line.

Q. Two lines and a different type of machine for each [fol. 866] line?

A. No, for each operation.

Q. I see. Two machines? Right?

A. There is two double seamers and there is noodle fillers, chicken fillers, and like that. There is more than one machine.

Q. How many machines?

A. One, two, three, four, five, about five or six on each.

Q. And now there are how many?

A. Well, there is the same.

Q. And girls work at the machines, do they not?

A. Yes.

Q. They carry on the operations of the machine?

A. Yes, sir.

Q. Your job is to see that those machines properly operate?

A. Right.

Q. When you are not doing that, you are engaged in watching the scales that weigh the noodles to see that they are getting proper weight? Right?

A. Well, that is part of my job.

Q. I say, that is part of your job?

A. Yes.

Q. Now, besides watching these scales and keeping the machines operating properly, what else do you do?

A. Why, I watch the seams on the cans to see if they stay tight enough and if everything is running smoothly. I keep going around and keeping an eye on things to watch for anything that could go wrong.

Q. That is the noodle soup cans?

A. Yes.

Q. The tin is seamed together, is it not?

A. Right. It is rolled.

Q. You are responsible that those seams——

A. Are right.

Q. —are properly air tight; is that what you mean?

A. Right.

Q. That seaming is done by a machine?

A. Yes.

Q. And you are also responsible for the machines?

A. Yes.

Q. And in general you keep a check over the operations of that department, do you not?

[fol. 867] A. Yes.

Q. To see that everything is running right and that there is proper production? Right?

A. Right.

Q. Approximately how many girls are on this machine in this department?

A. Well, there is about 20 altogether.

Q. And if they have a break-down or something goes wrong with the machine, they call you?

A. Yes, sir.

Q. You keep yourself busy daily doing the kind of work you have described; is that right?

A. Yes, sir.

Q. How long have you worked for the company?

A. Five years.

Q. At this job?

A. Yes, sir.

Q. I believe the forelady in that department is McGinley?

A. Yes.

Q. If she leaves the department for any cause, you are responsible for the operation there while she is gone; are you not?

A. Well, not any more than at any other time.

Q. Well, she testified that if she wasn't there Bob Andrews would be there to look after things?

A. Well, I was there.

Q. I mean, if she left, you would be there as a general rule, and that when she leaves she places in you the responsibilty for the department?

A. Well, I wouldn't call it any more responsibility than I had while she was there. It was up to me to see the machines and to keep the lines running at all times.

Q. Are there any other male employees in that department around those machines besides yourself?

A. There was one other at that time.

Q. Who is that?

A. George Metzger.

Q. Metzger?

A. Yes.

Q. Was he doing the same kind of work you were doing?

A. Yes, sir.

Q. He is not there now?

[fol. 868] A. Yes.

Q. Is he?

A. He is still there.

Q. He is still there?

A. Yes, sir.

Q. Both of you do the same kind of work?

A. Yes, sir.

Q. Are you an older employee than he or younger?

A. Yes, older.

Q. Older. And you are a member of the association?

A. Yes, sir.

Q. An active member?

A. Yes, sir.

Q. What is your hourly rate?

A. 85.

Mr. Kleeb: That is all.
Mr. Reed: That is all.
(Witness excused.)

Mr. Reed: I believe a recess might help me organize my notes.
Trial Examiner Walsh: Yes. Ten minutes.
(A short recess was had.)

Trial Examiner Walsh: The hearings will come to order.

CHARLES A. BRAUN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Bostwick:

Mr. Bostwick: Mr. Braun.
Q. Your name is Charles A. Braun, Jr.?
A. That is correct.
Q. Where are you employed?
A. Branch house stock department.
Q. Of what company?
A. H. J. Heinz.
Q. Are you a foreman?
A. Yes, sir.
Q. How long have you worked for the Heinz Company?
[fol. 869] A. Approximately 7 years.
Q. A witness, Frank Koontz, testified that you talked to him about the Heinz Employees Association and against unions, and that this conversation was about three weeks before the strike.
Did you talk to Frank Koontz about the Heinz Employees Association?
A. I did not.
Q. Now, have you had any conversations with Frank Koontz in which he brought up the subject of unions and,

if so, please give us the conversation as nearly as you remember it?

A. Well, Koontz is what I would classify as a general complainer, and noticing a lot of his complaints that have come to me indirectly and directly, and I have had two or three conversations with him right at his work. And I could safely say that I never said anything about an inside group, although I have had him tell me he was a member of the A. F. of L. And I asked him, naturally, what benefit he would derive from it.

And he says, "Well, it is just a gamble." And we talked generalities and what things he thought he had to complain about. And I don't know as we reached any conclusion, but it was just a general conversation.

Q. Well, in these discussions about unions, what did you say to him about whether or not he should join a union?

A. I told him that it was entirely up to him, and that I had no jurisdiction over him as far as joining unions was concerned.

Q. What were the reasons for the discussion with him? In other words, why did you have any talk with him?

A. Well, generally, he was the sort of fellow who goes around and talks, "Well, I have got this crow to pick and I have got this crow to pick." And he always had something in his noodle that caused a lot of discussion in the department in general. And I felt that a man talking in that method was injurious to harmony, and I try as much as I can to keep such harmony within the group, and when I get reports like this, I immediately went to him and asked him what his complaints were, if any. And, naturally, the [fol. 870] conversation got into that channel because he admitted to me and to, I presume, others that he was associated with the union in quite a few respects.

Q. Now, Gutowski—do you know a man by the name of Gutowski?

A. Yes, sir.

Q. You heard him testify here?

A. Did I hear him, did you say?

Q. Yes.

A. No, I didn't.

Q. Well, he testified that he heard you say, "If Capan"—referring, I think, to Frank Capan—"If Capan sees fit to

fire anybody, it is all right with me." Did you ever make any such a statement to him?

A. No, sir, I didn't.

Q. A witness Sukits—Do you know Sukits?

A. Yes, sir.

Q. Well, he testified that at about two months before the strike you approached Sukits and two other men by the name of Romman and Bates after lunch hour on this given day, and in the cereal building and talked to them on the question of unions. Sukits said that you, Braun, said, "I heard there is an outside union going on," and that "these three man are not with the company long enough to know the benefits that the employees receive from the company." And you said, "That they should not bother with outside unions." Did you make any such statement?

A. I did not.

Q. Sukits further testified that you said that if the outside union got in, the company would make the men eat on the street. Did you ever make such a statement?

A. No, sir.

Q. Sukits said that you said the union could not give employees more than sixty cents per hour.

Did you ever make any such statement to Sukits?

A. I did not.

Q. Now, did you ever see anyone soliciting membership for either the A. F. of L. union or the employees association in your department?

A. You mean actual soliciting or signing up members?

Q. Yes.

A. I did not.

Q. Did you ever warn the people in your department [fol. 871] that the company would not permit membership solicitation of any kind during working hours?

A. I have.

Q. When was that, as nearly as you can recall?

A. I don't have any recollection of the exact time, but my department is in the habit of having a weekly meeting, and sometimes it even ran into every day, depending entirely on what I had to say, but I know distinctly that on one of these meetings that I told them there would be no toleration of solicitation of memberships for any group during the working hours which they had assigned to them.

Q. Now, you know Frank Capan, I believe?

A. Yes, sir.
Q. Is he a foreman?
A. No, sir.
Q. What does he do?
A. Why, I would classify Frank as a group leader. In other words, he carries out the instructions. I can't—he carries out, directly carries out or indirectly the instructions which I issue each morning or at any time during the day.
Q. How many of those are there in the department?
A. In whose department? In mine?
Q. No, Capan's. Where Capan works, how many people work there?
A. Well, I would say approximately 14 or 15 men, in different groups.
Q. Now, these men that work with Capan, they work with him and he works with them; is that right?
A. Yes, sir.
Q. And how many such people are there in your department?
A. Well, there can be any amount. There are at this time approximately 5. I would say 5 men.
Q. In other words, for the different groups or gang, as you call them?
A. I guess you would call them—you could hardly call them distinct groups, but yet they can be distinct groups. It merely measures up to different departments, certain groups in different departments, or receiving goods from these different departments.
Q. Now, is he an hourly worker?
A. Yes, sir.

Mr. Bostwick: Cross-examine.

[fol. 872] Cross-examination.

By Mr. Kleeb:

Q. What makes up this branch house stock; that is, what kind of work do you do?
A. It is strictly the stacking and storage of all finished products; that is, the case goods.
Q. That is, the products of the Heinz Plant?
A. That is right.

Q. Are stacked and stored in the branch house stock department?

A. That is correct.

Q. Is that branch house stock one whole department or is it broken down into subdivisions which have names?

A. Well, I would say it is an entire group in itself, of which there are certain other groups.

Q. And do those other groups have names?

A. No.

Q. Do you call them any names?

A. No, it is all branch house stock.

Q. And you are in charge of that entire department?

A. That is correct.

Q. Now, you say that Frank Capan carries out the orders that you give him, say, in the morning, or at the beginning of the afternoon, as the case might be. What do you mean, what are the mechanics of that?

A. Well, that is more or less, for instance—it is rather hard to—there are certain—in the storage department you have to find room and I make the rounds and find the necessary room, and I give him four men or three men, as the need may be, and say, "Now, here is these men. You get them started on this," or "Take another group and start them on that and work with them and see that they get trucks." Which is a necessary thing in a department of that type because all the stuff naturally comes down in four wheel trucks, and his job is to see that the trucks are gotten empty, emptied and back empty to the departments.

Q. I see. And how many employees approximately are in the entire branch house stock?

A. About 43, I think is correct.

Q. So that Capan over a period of time might be working with these five men, and another time four or five other [fol. 873] men, and another time four or five other men?

A. Yes.

Q. During the period of a month or so; is that right?

A. That is true.

Q. Depending on what the work is and what work you assign him to do?

A. That is correct.

Q. Do you tell him what men to pick or does he pick them himself?

A. We work strictly on a work list.

Q. What do you mean by that?

A. A work list is a written list which is made up every day and posted on the bulletin board at the meeting place of our—of the respective departments, in the morning. In other words, we will say we have 42 men, which is sometimes correct, in the morning, and sometimes not.

Q. Yes.

A. Depending on shifts. And this work list, each department naturally has a certain amount of stock. So we assign, or, rather I assign and put on this work list three men, say, to a certain number of machines, three men to another department, and so on, throughout the entire list, and this is posted, and these men automatically know that that is where they go for that day.

Q. I see.

A. And the others follow out after that in accordance with that.

Q. Well, then, the men themselves know what the various departments in the department will be that they are going to go to get the finished products to bring to your department?

A. That is correct.

Q. And you will tell Frank Capan which group he is to go with and what is to be done with that group; is that right?

A. That is correct.

Q. Well, are there other men in your department that you also assign, give orders to like you do to Capan?

A. Yes.

Q. Name some of them, will you, please?

A. Carl Fink.

Q. Carl what?

[fol. 874] A. Carl Fink.

Q. Fink?

A. F-i-n-k.

Q. Yes.

A. John Wirth, W-i-r-t-h, and a man who has left lately that I did have.

Q. What was his name?

A. Paul Werme, W-e-r-m-e. That is four offhand.

Q. Yes. There might be one or two others?

A. Yes.

Q. Well, these men are all like Capan, so-called group leaders?

A. Yes.

Q. And you also pick on these particular men in the morning, say, "Now, you take this group and go to this department"? "You take this group and go to this department"? Is that right?

A. Yes, generally, but I can pick anybody.

Q. Yes, but generally you pick these group leaders?

A. Yes.

Q. Well, are most of those men you have named, like Capan, men with more years of service and experience in that department than others?

A. They are not picked on account of their years of service.

Q. Why?

A. They are picked because I feel that they have a little bit more intelligence than possibly the men that are under them, that is, that they work with every day.

Q. Yes.

A. And because they can read and write, and the work does take quite a bit of reading and writing.

Q. Explain that. How does it take a good bit of reading and writing?

A. Every load of good- that comes from a department has a slip on it.

Q. Yes.

A. And on this slip specifies a certain number of cases. In other words, if he can't read "70 cases, 80 cases," or whatever it is, why, you are not able to count the load. So you are not able to count the load so that it coincides with the slip. And these slips, naturally, would be a vital part of the records of the entire company. If we made an error of—if the slip said "70" and there were 90 cases on the load, the man would let 90 cases go through, there would be an over-production of 20 cases in that particular [fol. 875] instance, and if it were a whole day, maybe 100 loads would come down, and, naturally, 2000 cases. And that has to be straightened out correct, and the slips have to be lined up.

Q. So that these men are chosen because, in your opinion, they have the ability and intelligence to assume the responsibility?

A. Well, if that is a responsibility. The responsibility is counting.

Q. Yes.

A. Mostly.

Q. I mean, if it were done incorrectly it would affect the record of the company, wouldn't it?

A. Very much.

Q. Therefore, it is a responsibility to that extent, isn't it?

A. Yes, sir.

Q. And do you as being in charge of this department choose these men, or are they chosen for you?

A. These men are merely of my choosing.

Q. I see.

A. I have picked them out. I have picked other fellows out, and merely as working men, that is all they are as far as I can see.

Q. Yes. How long would you say that Capan and these others you have mentioned have been group leaders as described. I mean, a year or six months, or five years? Would you estimate that?

A. Are you talking about anybody specifically?

Q. Let's say Frank Capan.

A. I think approximately a year, maybe better than a year, possibly two years, if I am not mistaken.

Q. Do you know whether or not the fact that he is a group leader and has been a group leader has resulted in his receiving a penny or two pennies or a few cents more per hour than other men in your department?

A. I am positive that it has not.

Q. That what?

A. I am positive that it hasn't.

Q. Has not?

A. Yes, sir.

Q. Do you know whether that is true also with the others?

A. I am positive, in all instances.

Q. That the fact that they are group leaders has not affected their wage?

[fol. 876] A. It hasn't affected it any great amount.

Q. Well, has it affected it at all?

A. I think that more or less, the reason, if any, for increase in wages has been length of service.

Q. Well, am I to understand——

A. Because they——

Q. Sir?

A. These particular men are not paid as high as some of the older men who have been in the company a long time.

Q. I understand that, but what I am getting at is this; Do you know whether or not the fact that they have this, as I call it, additional responsibility to check these figures results in them being awarded by the company for having that responsibility by getting a few pennies more an hour.

A. Yes, I have tried to get them more money.

Q. Because of that?

A. Sure, because of a great amount of intelligence on their part.

Q. Yes?

A. The fact that they are doing a little bit of work that probably anybody could do, but those particular men have been chosen.

Q. And the others are doing more or less muscle work, so to speak?

A. Yes, some of these fellows.

Q. They assist these other men in doing this muscle work, but they do this additional work?

A. Yes. Wait a minute. You make a statement there "additional work." I don't think that you are correct there. The very men that are working with these fellows do the same thing.

Q. Yes, but I mean the work of checking.

A. The checking is done by every man in the department.

Q. But the responsibility for the figures, the totals, and so forth?

A. The figures we have nothing to do with. The only thing we have to do is to compare. A comparison is fairly simple, but the getting together of each one of these slips is assumed by every man in the department.

Q. Yes?

A. The actual amount of work and the overseeing of the work itself in a small degree is done by these particular men.

[fol. 877] Q. Yes. These group leaders, as you call them?

A. Yes.

Q. Well, has the fact that you have asked the management for an increase for these group leaders resulted in any of them getting an increase?

A. Yes.

Q. Did Capan ever get one?

A. Yes, he has gotten several increases.

Q. Because of your request?
A. Because of my request.
Q. Have the others also been so rewarded?
A. The other ones—what I am trying to get at is that I tried to keep the level of their wages just a shade above the—it is just—a group leader, naturally, should be rewarded slightly more.
Q. Yes.
A. For something, if he is a group leader.
Q. And you feel that way do you?
A. Yes.
Q. And that is the reason you have gone to the management about them, isn't it?
A. Yes.

Mr. Kleeb: That is all.
Mr. Bostwick: That is all, Mr. Braun.

(Witness excused.)

Mr. Bostwick: Mr. Hayes.

Oscar R. Hayes, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bostwick:

Q. You are Mr. O. R. Hayes, I believe?
A. That is right.
Q. How long have you worked for the Heinz Company, Mr. Hayes?
A. 14 years.
Q. What are your duties with the Heinz Company?
A. Foreman.
Q. You work out of the general superintendent's office?
A. That is right.
Q. It has been testified here by some of the witnesses for [fol. 878] the complainant that you are assistant superintendent of the plant; is that right?
A. No, sir.

Q. Now, Mr. Novak testified that at a meeting in Mr. Heinrich's office in April, about, I think he said the 19th, that you were present with himself and Mr. Heinrich and Miss Weisman, Fred Heinz, and Mr. Koehrer. Is that true?

A. I was not present at the meeting.

Q. I think that Mr. Warnick—Do you know Mr. Warnick?

A. Yes.

Q. He testified that he had a conversation with you which occurred approximately one week before the start of the strike, in which you referred to one of Warnick's fellow employees, Frank Jadlowick, as being an employee with 13 years service, who was so dumb that he joined an outside union, the outside union. Is that true?

A. That is not true.

Q. What are the fact- about your conversation with Warnick, if you had one?

A. Oh, yes, I had a conversation with John Warnick. John Warnick was a boy who was formerly in the labor department, and I heard that the can group needed some help, and I recommended him for a job in the can room, where I felt that he could make more money and perhaps better himself a little bit. That was in the fall or summer of 1936. He went up to the can room and went to work up there. During the winter it was necessary because of a serious infraction of the company rules to discipline three members of that department, and John happened to be one of the boys that was disciplined. This Frank referred to was also one of the boys, one of the three.

My conversation with John had to do with the fact that after these boys came back to work, this Frank, he assumed a surly and a grouchy attitude, where before that time he had a good attitude and a good disposition. And I hope that John wouldn't do like Frank did. In other words, I hoped that John would forget about the thing and go ahead with his work, make a success of himself and wouldn't allow something like that to hold him down. Any reference of mine to Frank was in that regard, that I hoped that John [fol. 879] would profit by it and not act like Frank did, not do like Frank did, I guess that is what I said.

Q. Did you say anything about Frank's joining an outside union?

A. No, sir.

Q. Now, Warnick also testified that you said in that conversation or some other that you said, "We have 1300 members." Is that true?

A. That is not true.

Q. The witness, Frank Koontz, testified that one morning before the strike, you said to Frank, "Don't be like that dumb brother of yours. If anybody asks you to join the outside union, tell him to go to hell."

Is that true?

A. Perhaps I could explain it, Mr. Bostwick, what I said.

Q. All right.

A. Tell the story.

Q. Give us your statement.

A. Beg your pardon?

Q. Give us your statement of the conversation.

A. All right. That morning in question, I presume it is the one that Frank Koontz refers to, I was checking floor space in the branch house stock department and happened to pass through the location where John worked. I saw, as I remember it—I saw some broken cases there which came off of the conveyor. At times they come *come* off the conveyor unsealed, broken cases, and so forth. And, knowing Frank quite well, I asked him how long the cases had been there, and what period of time they had been accumulated, rather, trying to get an idea of how many cases we had broken in a certain length of time, and I got talking to him. And when you talk to the Koontz boys, why, it seems like the question of their father always comes up. And that brought on our later conversation.

And also previously, in a few reports about people being forced to do this or forced to do that, as a general thing, why you try to quiet anything like that down, when you did happen to hear about it. So the sum and substance of what I told Frank or, at least, the reference that he makes to it was this: Anything he wanted to do was all right. If anyone told him he had to join anything, to tell him to go to hell.

[fol. 880] Q. You say anything he wanted to do was all right. What do you mean by that?

A. Oh, I meant by that, that if he wanted to join the association or if he wanted to join the A. F. of L., why, that was his business. If he wanted to do it, why, that is up to him, but if anyone told him he had to do it, why, that is a different proposition.

Q. Now, I think you said that when you went to this place you went by John?

A. I meant Frank. If I said John, I meant Frank. There is three Koontz boys working there at that time, and their names get mixed up sometimes.

Q. Now, John Koontz also testified in this case, and he testified that the day after his conversation with Heinrich about a conversation, unions, and so forth, that he had a conversation with you on the first floor of the spaghetti building near some trucks, and he says that you asked him, "John, what do you think of unions?" And that he answered, John answered that he thought they were all right, and that Hayes, you, then asked John, "What makes you think they are all right?" And asked John if he knew, John knew, that Frank Novak was getting $5 a head for every A. F. of L. member that he signed up and that he, John, then told you that was incorrect, and you got mad.

What are the facts about that?

A. Well, I didn't tell him that Frank Novak was making $5 a head. His conversation with John Koontz was a result of a complaint we had from the purchasing department in regard to a shipment of flour which was shipped into the factory and which John, who happened to be working in the receiving department, happened to receive.

The dray slip, as I recall it, from the Charles Cope Company, called for forty—yes, forty barrels of flour. 40 barrels is the equivalent of 80 bags. The dray slip that John signed for the driver to take back was just his signature to there, that he had received the 40 barrels, but on our copy of the slip, which was retained by us, and which went into our records, he had marked in pencil "77 bags" which would be three bags short on the shipment, or a barrel and a half, and I was pointing out to John that I didn't question the receipt at all and I thought that I would correct on our dray slip but that he shouldn't have signed the outside dray slip, for the full amount when he didn't receive it, the purchasing [fol. 881] department would question the payment for it.

Well, John said I was just like some other people, I wanted to pick on him because he belonged to the union.

I said, "No, this business has got nothing to do with that at all. I just want to talk to you about this. I have your explanation of it. You have told me who else was there, and I tried to take care of it. As far as your story is concerned, it's all right."

And we talked a little bit, I think, about his father, and so forth, and then I said, "Well, John, what is the matter you think I want to pick on you?" I said, "I don't know what's the matter with you."

And he told me his trouble really went back to the time he was previously employed by the company over in the advertising-stock department, and he said when he was laid off over there on that side of the street that he was promised they would take him back at the first opportunity and he said they hadn't taken him back at the first opportunity. Well, I told him that any understanding he had with those people on that side of the street, I wasn't responsible for, I didn't feel like we are responsible for, and, so far as I knew, he had been treated fine on our side of the street since he had been over there, that he couldn't hardly hold us responsible for what they had promised him. Maybe there was a misunderstanding and maybe there was not; I don't know.

But I said, "I want you to be on our side; you are working over here; you be on this side. Forget about that and see if things won't go better."

Q. This advertising department, you say, was on one side of the street, and your manufacturing department, in which you worked, was on the other side of the street?

A. Well, it happened that where John worked, more than where I worked, was on one side, than on the other. I might have been on the other side of the street sometimes, but I had nothing to do with the advertising-stock department.

Q. Is that what you meant by "being on our side of the situation?"

A. Yes.

Q. Did that statement have any reference at all to unions?

A. No, it did not.

Q. Do you know Harry Bodnar?

A. Yes, sir.

[fol. 882] Q. Mr. Bodnar testified that you followed him about the plant for three days either trying to tell him or telling him that he had to sign with the Heinz Employees' Association. Is that true?

A. That is not true.

Q. He further testified that you said that if Bodnar signed "with the outside union", as he called it, that he would be thrown off. Those were his words, and that he told you there was plenty of time for him yet to sign, and you then

said to Bodnar, that he, Bodnar, had to sign at once, as there was a new rule. Is that true?

A. No, sir, that is not true.

Q. Do you remember any conversation with Bodnar?

A. Oh, yes.

Q. What is your version of the conversation?

A. Well, Harry Bodnar was working in the storage department. I was either working on a truck or a trailer, probably a trailer. Our duties are to go with the load and unload it and load up the trailer when it is empty, and things like that, and I had observed this group, especially, and also other people told me, instead of working they were standing and talking a lot, and inasmuch as Harry had been with us quite a while I stopped him one day and told him I didn't think he was doing his work right, standing around talking, when he should be working.

Harry immediately said, "I didn't join anything."

I said, "I am not talking to you about what you join or don't join. That don't have anything to do with this. All I am trying to tell you is, you have worked here for nine years"—I think it was—"and you have had employment." I don't think he had missed a day in all that time; and I told him I didn't think he was doing the right thing in standing around that way, and Harry said, "Well," he said, "when you work everybody is your friend and when you don't work no one is your friend."

And that made me a little peeved, but then I knew when Harry Bodnar was sick in 1929 and 1930 over a period of six months the company gave him $75 a month while he was lying in bed, sick, to help him and help support his family. I knew also that Mr. Heinrich had personally given him $35 out of his own pocket to help him, so I got a little bit sore about it. I don't know that I was justified in it or not, but maybe I took the wrong stand in thinking he was unappre-
[fol. 883] ciative of the help the company had voluntarily given him at a time when he wasn't able to help himself, but I don't know, Harry just didn't get the point at all, so finally I had to walk away and leave him.

Q. Was there any discussion about unions at all?

A. No.

Q. Or any reference to unions?

A. No.

Q. Or any reference to any new rules?

A. No.

Q. Do you know Maurice Shindler?

A. Yes, sir.

Q. Did you hear him testify in this case?

A. No, I didn't hear him testify. I wasn't here. I have heard what he testified.

Q. All right. Now, he testified that on the evening of May 20th of this year he was at a table in the cafeteria because he worked overtime that day. He further testified that after he was seated you came in and sat down at the same table and you were joined by four other foremen, two of them he didn't know, two of them he identified as Palivoda and Skertish. He testified that the foremen reported to you the results they had obtained on calling on lists of persons, I think he said girls, that you had furnished to the foreman, and that the purpose of the call which you told them to make and they were reporting on was to contact the girls to induce them to join the Heinz Employees Association.

Did any such conversation take place?

A. No, sir.

Q. Were you in the cafeteria, so far as you know, on the evening of May 20th?

A. I know I was there.

Q. And how did it come you were there that night?

A. Well, we had a meeting of the safety council that night, and I happened to be on the safety council, so naturally, I ate there that night.

Q. Do you remember seeing Shindler there?

A. I don't remember, no.

Q. Did you sit with Palivoda or Skertish?

A. Well, I eat supper there about two or three nights a week. I don't know who I sat with that night.

Q. That night?

A. That night, no.

Q. Did you ever get any report such as that from [fol. 884] Palivoda or Skertish, either one?

A. Never did.

Q. Or from any other foreman?

A. I got no report like that from any foreman or anybody.

Q. Did you ever give anybody any lists of people to see for the employees' association?

A. No, sir.

Q. Did you ever see any such lists?

A. I never did.

Mr. Bostwick: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. Do you wish us to understand that you never sat at a table at which Mr. Maurice Shindler also sat?

A. Why, Mr. Kleeb, I didn't intend to give any such impression as that.

Q. Then it's possible you have sat at a table and had a meal and Mr. Maurice Shindler also sat at the same table; is that right?

A. I remember on two occasions in the men's dining room when I sat at the same table with him and remember what I talked to him about and I think if he had sat at my table that night I would have remembered it.

Q. But you don't know whether he did or not?

A. I don't even know if he was there or not.

Q. But he might have been at that table that night?

A. Well, I don't think he was. I think I would have remembered it if he was there.

Q. Do you remember whether he was or not?

A. Well, as I stated, Mr. Kleeb, I ate there a good many times——

Q. Yes.

A. —and if you would ask me who sat at the table, at the same table with me last week when I sat there, I couldn't tell you.

Q. That's right. And you can't tell me now whether Shindler did or did not sit at that table on the night of the 20th.

A. I don't know where he sat.

Q. He might have sat at that table?

A. I don't know where he sat.

[fol. 885] Q. When did you first see the signatures to the petition for the Heinz Employees' Association?

A. When did I first see them?

Q. Yes.

A. I never saw any.

Q. You have never seen them? You have never seen one of the petitions of the Heinz Employees Association?

A. Never have.

Q. Never saw a signature on it?

A. I never saw a petition.

Q. By the way, during tomato season you are in charge of one of the branch factories at times?

A. No, I am not. I do go through some branch factories, but I have never been in charge of any branch factory at any time.

Mr. Kleeb: That's all.

Trial Examiner Walsh: Just a moment. Are you through, Mr. Bostwick?

Mr. Bostwick: Yes.

Trial Examiner Walsh: I would like to ask a question or two.

Examination.

By Trial Examiner Walsh:

Q. You have testified that on all occasions when the subject of unionism came up in conversation with employees you told them it was none of your business what they thought about what organization they wished to join?

A. I don't believe that there was very much testimony in regard to that, but I certainly did follow that policy.

Q. That was your attitude?

A. Yes, absolutely.

Q. Roughly, that's a fair picture of your attitude?

A. That's right.

Q. When did you arrive at that opinion, it was not your business?

A. Let's see. When did I arrive at that opinion it was none of my business? Well, I had read the Wagner law to some extent, and I think that, personally, I had the understanding, Mr. Walsh, myself, it was none of our business. I don't say just when that was, because I don't know when the Wagner law was passed and upheld by the Supreme [fol. 886] Court, and things like that, but I think some time, from the time I first knew of it, I had an understanding similar to that.

Q. Then it should be thought of this way: You believed it must not be any of your business because, so to speak, the law said it must not.

A. That was my attitude on it.

Q. The law is fairly comprehensive. It says an employer must not interfere, restrain, coerce, or affect in any way.

A. That's the way I understood it, yes, sir.

Q. Now, if we could abstract ourselves from the law, do you, as a supervisor of men, think it's any of your business whether they belong to an organization or not? That is to say, do you think that is a matter of importance in the efficient running of a factory?

A. Well, never having had experience in any factory other than our own, I am afraid I am not qualified to express my opinion on it, Mr. Walsh.

Q. Is Frank Koontz, in your estimation, a reasonably intelligent person?

A. Well, I would say that—You hesitate to express your opinion.

Q. He understands English all right?

A. Yes, he understands English.

Q. He is an American fellow, and can read and write, and so forth?

A. Yes.

Q. Is he the sort of person who thinks about his rights a good deal? Is he that kind of a person?

You know, there are some people who are more or less constantly conscious of the fact they have rights that other people must respect. Is he that sort of a person?

A. Well, I never had so much contact with Frank Koontz. The corner he worked in on the shipping floor was sort of out of the way. I had more contact with his brother, John Koontz. I would be more qualified to talk about John Koontz than Frank.

Q. Let me put it this way: Would you consider Frank Koontz a rather shy and diffident person?

A. I would consider him quite the opposite.

Q. Quite the opposite?

A. Yes.

Q. Why did you feel it necessary to reassure him about his rights by telling him if anybody suggested he must join [fol. 887] either of these organizations to tell him to go to hell? Why did you feel it was necessary to tell him he needn't be intimidated or feel oppressed by such a statement?

A. I don't recall just why I did, Mr. Walsh. That's back just about seven months ago, now, and, of course, some of these conversations—You don't recall why things came up as much as you recall something came up.

Q. Yes, I can understand. Had you at that time any idea at all as to which of these organizations he was interested in?

A. Well, now, let me think. I am not sure if I did at that time, or not. Later, I did, but whether I did at that time or not I don't know.

Q. Later you came to know he was interested in the Federation?

A. Yes, I knew all the Koontz boys were. In fact, they handed out circulars outside the factory inviting you to come to the meetings.

Q. You are not certain you knew at that time or had any suspicion at that time?

A. No, I am not certain.

Q. And you can't shed any more light for your reason for making that reassuring remark to him, that he mustn't feel intimidated by anybody who said to him, "You must join this or the other organization"?

A. No, I don't believe I could.

Trial Examiner Walsh: All right.

Recross-examination.

By Mr. Kleeb:

Q. How long have you been foreman of the 14 years that you have been with the company?

A. Well, I would say about 13, maybe 13½.

Q. Yes. Do you recall or recollect being given any instructions or advice by any officials superior to yourself about your attitude toward unions, prior to this year?

A. No.

Q. You attend the foremen's meetings?

A. Oh, yes.

Q. And you have for years, haven't you?

A. Yes, I have for years.

Q. And at those meetings foremen receive instructions from Mr. Heinrich or other superiors as to what they are [fol. 888] doing, whether they are doing it right, or how to do things?

A. That's right; yes, sir.

Q. True as to foreladies, I assume?

A. Yes, sir.

Q. And in all this time that you have been a foreman and all the foremen's meetings you have attended, are we to understand you never received instructions on labor relations or labor policies or unions before this year from Mr. Heinrich or any other person?

A. Mr. Kleeb, if you will state that definitely for unions, I will say we have never received any instructions about unions at all.

Q. At no time?

A. At no time. You are asking me prior to the trouble we had here this spring?

Q. Yes.

A. That's right, sure.

Q. Let's break that down a little bit. You have, then, received instructions about the industrial-relations or the labor-relations policies of the Heinz Company?

A. When are you referring to, now?

Q. Prior to the first of January.

A. Oh, prior to the first of January?

Q. Yes, prior to this trouble, as you call it.

A. No, I don't recall we had. I don't recall any instructions at all on labor policies. Our instructions were more on labor treatment, how to treat them, how to get along with them, and things like that. It was more personal relation than it was labor policies.

Q. So that we are to understand, so far as the labor policies of the company, so far as labor on one side and the employer on the other, you recall no instructions on policy?

A. On the company's attitude on labor policy?

Q. Yes.

A. I would say I didn't.

Q. Neither personally nor in the group meetings?

A. That's right. I don't think they were ever brought up until this year.

Q. What were the instructions you, as foreman, received with reference to treatment of working people at the plant?

A. Well, Mr. Kleeb, of course, I can only speak personally, now; when you asked my impression, when you [fol. 889] ask me what impression I receive.

Q. Yes.

A. Yes. My impressions have always been from any superior mind, that we were expected to treat every worker fairly and squarely and do everything we could to see every-

body was given an opportunity to do what they could do and, too, on no occasion to take advantage of anybody because of the work they happened to be doing; and also it was made fairly definite that nobody at any time could be discharged, laid off, mistreated, or anything like that, without going to Mr. Heinrich about it, and, in other words, seeing that the fellow got a good show all the way through.

Q. A fair hearing?

A. A fair hearing, that's right. That has been my—That's the way I have absorbed it; maybe I had better put it that way.

Q. That is, the impression you got from the instructions you received at various times was that?

A. That's right.

Q. When did you, this year, as foreman, individually or collectively with other foremen, receive any instructions on labor policy or labor relations?

A. Well, I tell you, we never received any instructions on labor policy or labor relations. Otherwise—We were told it was none of our business.

Q. I say, when?

A. Well, I would say probably the first part of May, something like that, or the latter part of April.

Q. Do you recall the occasion of those instructions, where it was, and who gave them?

A. Yes.

Q. Please state that.

A. I remember that Mr. Heinrich and Mr. Riley both gave us instructions on what they wished our attitude to be in regard to the struggle that was going on there, the organization struggle, you might say.

Q. It was shortly before the strike, wasn't it?

A. Yes, it was before the strike; probably in May, some time, I guess.

Q. Both of those occasions were meetings of foremen and foreladies?

A. Yes, that's right, supervisory force.

Q. And you were addressed on one occasion by Mr. Riley giving a talk to you?

[fol. 890] A. That's right.

Q. On another occasion by Mr. Heinrich speaking to you?

A. Yes, sir.

Q. Is that all that was said to you, that you should keep hands off and if there was more said can't you tell us a little more that was said by these two gentlemen?

A. Oh, absolutely, we were told more than that. We were not only told "Hands off," we were absolutely told not to participate in it in any way.

Q. Participate in what?

A. The organization that was going on.

Q. Did you know, as a foreman working out of Mr. Heinrich's office, that the foremen and foreladies and group leaders had been participating in the organization of the Heinz Employees Association?

A. I did not.

Q. Did you hear rumors to that effect?

A. Not until Mr. Riley spoke to us.

Q. Mr. Riley told you that there were rumors to that effect?

A. I think he said he had been told there was, or something like that. That's the way I remember it.

Q. And Mr. Heinrich told you about the same thing, didn't he?

A. As I remember, Mr. Riley, the reason he spoke to us, I think someone came to him and complained. Why Mr. Heinrich did, I don't know. Of course, the meeting was called and I went to the meeting, and I listened to it.

Q. What preference did you have in the matter?

A. The——

Mr. Bostwick: I object to it as incompetent, immaterial, and not proper cross examination.

Trial Examiner Walsh: Sustained.

Trial Examiner Walsh: Mr. Reed, are you going to have Mr. Hayes return? Are you intending to recall him?

Mr. Reed: I don't know of anything now.

Trial Examiner Walsh: I want to ask a question or so about something that hasn't been brought up yet.

Examination.

By Trial Examiner Walsh:

Q. Mr. Hayes, are you familiar with that—I think it is [fol. 891] Board's exhibit 22; I haven't been ab-e to find it; at any rate, the final agreement or whatever it may be called that was entered into by the Heinz Company and——

A. You mean the one that was posted on the bulletin board?

Q. —and posted on the bulletin board on August 15th?

A. I have read it.

Q. Where did you read it?

A. On the bulletin board. I never saw it before it was on the bulletin board.

Q. And what have you done about it since then?

A. Well, the only thing I have done about it is to observe it and to follow it and to base my actions and anything I might do on it.

Q. Has that been a subject of discussion as your foremen's meetings?

A. No.

Q. Never has?

A. No.

Q. Have you discussed the matter in any official formal way with Mr. Heinrich?

A. Only with regard to that one provision on piecework rates which has come up in the testimony. There was one other thing. Some of the workers asked me if Armistice was in the list of holidays, and I said, "Just read the agreement; it isn't included, I am sure of that," and I walked with them and showed them that it wasn't on there. That's a specific instance I remember.

If I had it before me I might remember something else.

Q. This is sufficient for my purpose. Did you, yourself, call it to the attention of the foremen in the plant, any of them, or all of them?

A. Why, that wouldn't be in my duties, Mr. Walsh.

Q. And so you didn't?

A. So, I didn't.

Q. To your knowledge——

A. No, that wouldn't be in my duties at all.

Q. To your knowledge was that done? As far as you know, was that done?

A. Well, of course, as far as I individually was concerned, I knew it was there, and I read it, and whether that was called to the attention of the other foremen or not I [fol. 892] couldn't say. Mr. Heinrich called it to my attention.

Q. Well, we can find out. But you don't know?

A. No, I don't know.

Trial Examiner Walsh: That's all.
Mr. Bostwick: That's all.

(Witness excused.)

Mr. Bostwick: Mr. Capan, please.

FRANK CAPAN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bostwick:

Q. Your name is Frank Capan, I believe.
A. Yes, sir.
Q. How long have you worked for the H. J. Heinz Company?
A. Four years.
Q. And in what department do you work?
A. Branch-house stock.
Q. Are you a foreman?
A. No, sir.
Q. Have you any power to discharge anybody?
A. No, sir.
Q. Any power to employ anybody?
A. No, sir.
Q. Are you paid on an hourly wage?
A. Yes, sir.
Q. Who is your foreman?
A. C. A. Braun, Jr.
Q. Now, Mr. Gutowski testified that Mr. Braun said, about two years ago, to Gutowski, "If Capan sees fit to fire anybody, it's all right with me." Did you ever hear of any such conversation?
A. No, sir, I never heard of such a statement.
Q. Now, it was testified that you wear a foreman's uniform. Is that true?
A. That's right.
Well, it's white pants, gray jacket, and white cap.
Q. Can anybody buy it?
A. Yes, sir.

Q. You bought your own, did you?

[fol. 893] A. Yes, sir.

Q. Do you get it laundered there and do you pay for the laundry?

A. Yes.

Q. Did you ever circulate a petition for the Heinz Company or the Heinz Employees Association?

A. No, sir, I did not.

Q. Did you ever talk to anybody in an effort to get them to join the Heinz Employees Association?

A. No, I didn't take no part in it, in the union whatsoever.

Q. Now, do you know a man by the name of Sukits?

A. Yes, sir.

Q. I think it's Frank Sukits, I am not sure.

A. I believe so, yes.

Q. Well, Mr. Sukits testified that you are his boss. Will you give your idea of your relationship to Sukits?

A. Why, no, sir; I believe Mr. Braun made the statement on the stand here that the only authority I have is which he bestows upon me. If Mr. Sukits is one individual I happen to take orders to, he is probably unfortunate or fortunate, but that is the way it works. In other words, I pass the word around that is given to me. He can, as well, get the order and give it to me as I can give it to him.

Q. And you work on the job just like the rest of the men there?

A. Yes, sir.

Q. The same as they do?

A. Yes, sir.

Mr. Bostwick: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. Did you ever report any man that worked for you to Mr. Braun?

A. There isn't any men work for me.

Q. Any of these men assigned to you by Braun, did you ever report them for not doing their work to Braun?

A. No, sir.

Q. Never have in five years; never, since you have been a group leader, have you reported a man?

A. No, sir.

Q. The other men in this department don't wear this white cap, do they?

A. No, sir.

[fol. 894] Q. How did it happen you knew you could buy one and how could you buy one?

A. The only difference is, the cap is 10 cents more. The one is 7 cents and the other 17 cents, and maybe the other guys wouldn't pay the 17 cents.

Q. As far as you know, there is no custom in the department that the group leaders should wear that kind of cap and others shouldn't?

A. It has no bearing on the authority whatsoever, no, sir.

Q. I believe you stated you took no part whatever in the Heinz Employees Association?

A. That's right.

Q. You did, however, attend some meetings, didn't you?

A. I went to one meeting, yes.

Q. That was May 11th, at Carnegie Hall?

A. Yes, sir.

Mr. Kleeb: That's all.

Mr. Bostwick: That's all.

(Witness excused.)

Mr. Bostwick: Joseph Paul.

Joseph Paul, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bostwick:

Q. Your name is Joseph Paul?

A. Yes.

Q. How long have you been employed by the H. J. Heinz Company?

A. 26 years.

Q. What department do you work in?

A. Mixed-pickle department.

Q. Are you a foreman?

A. No, sir.

Q. What do you do?
A. Work.
Q. On whose orders?
A. On Mr. Koehrer's.
Q. Now, are you paid on an hourly wage?
A. Yes, sir.
Q. Do you work along with the other men in your depart-
[fol. 895] ment?
A. Yes, sir.
Q. What is your duty? What are your duties?
A. Why, Mr. Koehrer give me the orders what to do and it's up to me to get the work out.
Q. Well, what do you work at?
A. In the mixed-pickle.
Q. What do you do in the mixed-pickle department?
A. Pickles, whatever orders we get.
Q. What do you do about the barrels?
A. Open them, close them, paint them, stencil them, get them ready for crate.
Q. That's your job?
A. Yes, sir.
Q. Do you know Joe Pintus?
A. Yes, sir.
Q. Joe testified you were his foreman and that you handed him a Heinz Employees Association petition and asked him to sign it, but you told him it wasn't compulsory.
A. I did ask him.
Q. Now, Pintus says that he said you said to him, Pintus, "Now, Joseph, they asked me to go around to every man and ask them to sign this paper if they wanted to." Did you ever tell Joe Pintus that?
A. I did not.
Q. Where did you get this petition?
A. I got it off of Frank Kirschner.
Q. Who is Frank Kirschner? What does he do?
A. He goes around from different departments to look after the filling machines.
Q. A mechanic?
A. That's right.
Q. Did you ever ask anybody more than once to sign?
A. No, sir.
Q. How long did you have the petition?
A. Two days.

Q. What did you do with it?

A. I gave it back to Frank Kirschner.

Q. Now, Joe says, further, that since the strike your attitude toward Joe has changed, that you find fault with him more quickly.

A. I did not.

Q. Is that true?

[fol. 896] A. I did not. I never have anything with Joe. I always treat him the same as before. After the strike, the same as before the strike.

Q. Have you been away a good deal of the time since the strike?

A. Yes, sir, I went away August 12th and come back the 20th of October.

Q. What were you doing then?

A. Cooking ketchup.

Q. Where?

A. Bowling Green, Ohio.

Q. And since you have been back have you seen Pintus?

A. I saw him the first day he come back and I shook hands with him and I asked him how he was and he said, "Okay," and he said, "When you come back?"

And I said, "Today."

And he said, "I guess you are glad you are back?"

A. And I said, "I am." That's all I ever talk to him, since I have been back.

Q. Now, in working on these barrels and putting the pickles in them, do you work on them just the same as the other men in your department?

A. Just the same as the other men; all the time.

Q. Now, Pintus says that he takes his orders from you. Is that right?

A. I get my orders Koehrer, from Mr. Koehrer, and Joe works alongside of me. I tell him what to do and how it is to be done.

Q. If he is working there with you?

A. That's right.

Q. He said you wear a foreman's uniform. What's that?

A. A foreman's uniform, the way I wear, I got that cooking ketchup.

Q. What kind of uniform do you wear cooking ketchup?

A. White trousers, gray jacket, white cap. I also got one tan jacket.

Q. You got a tan jacket, too?

A. One, yes.

Q. You must be two kinds of foreman, then. Have you got a gray cap?

A. I did, but that was wore out, and I got a white one, because I got the white one cheaper. The gray one cost a dollar and the white one 17 cents.

[fol. 897] Mr. Bostwick: That's all, I think. Wait a minute.

By Mr. Bostwick:

Q. Another fellow said you *you* were a foreman. I will have to ask you about him. There is a fellow by the name of Joe Pavlakovich said that.

A. Joe Pavlakovich.

Q. Well, Joe said you were his foreman. Is that right?

A. I am not.

Mr. Bostwick: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. You are a group leader, aren't you?

A. I don't know if you call it a group leader or not, but I would say not.

Q. Well, what if I told you that Mr. Heinrich, when he testified, said that you were a group leader? Would that change your opinion?

A. Well, in certain standings, maybe, you are, because Mr. Koehrer did turn over the orders to me and tell me to get this and that work done, and it's up to me to get the work out, and I don't give any orders to the other fellows, I just have to go on and do as Mr. Koehrer tells me to do.

Q. You tell the other fellows what's to be done?

A. If he is next to me and I see he don't do it right, it's up to me to tell him, because I am one of the oldest employees on that floor.

Q. You are one of the oldest employees on that floor?

A. Yes, on that floor.

Q. And Koehrer always gives you the orders to see that the things are properly done, doesn't he?

A. That's right.

Q. How many men do you tell what Koehrer's orders are? How many men are there?

A. Sometimes I have three on the floor, sometimes more, sometimes I am only myself, too.

Q. Do you know how long the fellow next to you in service has been in that department?

You had how many years? 26?

A. 26 years, yes, sir.

Q. And the next-oldest fellow, how many years has he? [fol. 898] A. Six or seven.

Q. He had six or seven. Who is that?

A. I would say John Tokman.

Q. That is, Tokman has six or seven, and the rest is the same or less than that?

A. Some of the men—some have less and some have more, but they are not there all the time, they are only there part of the time, when they are needed.

Q. Does Mr. Koehrer have other departments he is foreman of besides that one?

A. He is in the mixed-pickle and also the cooperage; yes, sir.

Q. He is responsible for both of those departments?

A. Yes.

Q. But you are only in the mixed-pickle?

A. I was on one floor.

Q. Mixed-pickle?

A. That's right.

Q. Did Mr. Koehrer ever bawl you out for the orders not being carried out properly?

A. At times that will happen.

Q. Because some of these men don't properly do the job; is that right?

A. That's right.

Q. And you get the devil for that, don't you?

A. I got it several times.

Q. Are you an expert ketchup cooker? I mean, is that the reason you were sent out to the Bowling Green plant?

A. I have been going to Bowling Green for the last 20 or 21 years.

Q. Tomato season?

A. Yes, just tomato season.

Q. That's about what time?

A. Beginning 10th or 15th of August to the 15th or 20th of October.

Q. And the company ships you out to Bowling Green?

A. Yes, sir.

Q. Ohio?
A. Yes, sir.
Q. And out there you do what?
A. Work; cook ketchup.
Q. Is anyone else sent from the Pittsburgh plant, out to the Bowling Green?
[fol. 899] A. If they need it.
Q. What's the custom in the last 20 years? Have you generally gone out alone?
A. No, I have sometimes six or seven, sometimes eight. We already were 10. Just depends on the season, the crop we get.
Q. This season how many went out?
A. Three.
Q. Are you in charge of those men, those ketchup cookers?
A. No, sir.
Q. Who is?
A. The branch house.
Q. In Bowling Green?
A. Yes. They tell me what to do.
Q. They tell you what to do?
A. That's right.
Q. And you say that yourself and these other men that go with you do the work?
A. They know just as well as I do. They go on with their work and I go on with mine.
Q. And you have been going out there how many years?
A. 20 or 21. I wouldn't say sure 21, but 20, sure.
Q. And the rest of the time you were over in the mixed pickle department?
A. That's right, under Mr. Koehrer.
Q. You testified you did get a petition from Frank Kischner?
A. Yes, sir.
Q. Is it like—Was it like Board's Exhibit 7?
A. No, it was just on a piece of common paper.
Q. Nothing on top of it?
A. No.
Q. Just a plain sheet of paper?
A. That's right.
Q. What department does Frank Kirschner work in?
A. He works in all departments. He goes after the vinegar filling machine, mustard filling, and I don't know how

much all, how much further out the other way he goes, I don't know.

Q. You know Frank Kirschner for a long time?

A. I have known Frank since I have been with the company.

Q. He is an old employee, isn't he?

[fol. 900] A. Yes.

Q. Were you working at the time Frank brought you this piece of paper?

A. No, sir.

Q. Where were you?

A. We meet in the morning, when we get to work; right by the time clock, he hand me that slip.

Q. And there was nothing on the paper?

A. No, sir.

Q. And what did Frank say to you?

A. Frank said, "We are going to organize, ourself, for our own union."

Q. And what did he tell you to do?

A. Well, he says it's up to me, whatever I wanted to do, so I went around.

Q. Did he tell you what to do with this blank piece of paper?

A. No, he did not.

Q. Did he tell you why he handed it to you?

A. I just told you he said to go and see how many that I can get to sign that on benefit and I went and asked a couple of the old-timers, only for two days, and after the two days I give it up and I hand it back to him.

Q. Why did you give it up?

A. Because I didn't want to be bothered with it.

Q. Why did you go to just old timers?

A. Because I thought it would be the proper thing, to ask them. I didn't ask any of the young fellows.

Q. Why?

A. Because I heard the rumor they are outside, with the A. F. of L. A fellow I know was out there, he couldn't sign up both ways, anyway, and I didn't ask any of them.

Q. You were certain that the older men were not in the A. F. of L., is that right?

A. Well, some of it was and some of them was not.

Q. You went to the old men because you thought they would sign, join the association, because the company favored the association, didn't you?

A. I just went to probably three or four of the old timers and the rest were probably three or four or five years.

Q. What made you think that the old men, the old em-
[fol. 901] ployees would want to sign this quicker than the young men?

A. Well, I just thought that a fellow that had been there 15 or 20 or 25 years, it would be the right thing for us to organize ourself.

Q. Why?

A. Well, for the simple reason that they always were satisfied all the time that they were there and they feel they were treated right.

Q. And joining this association would show that they felt that they were being treated right by the company?

A. That's right.

Mr. Reed: This is objected to. This is argument with the witness. It is not a question of fact.

Mr. Kleeb: The witness has answered.

Mr. Reed: I move to strike it, then.

Trial Examiner Walsh: Strike the answer.

Q. Did Kirschner tell you what you were to do with this paper after you got the signatures on it?

A. No, he did not.

Q. And you say you had it for about two days?

A. That's all I had it.

Q. And then you got tired of it?

A. Then I handed it back.

Q. To whom?

A. To Frank Kirschner.

Q. Did you go to see him or did he come through your department?

A. He passed right through the department, over the vinegar building, and I said, "Frank, here is the piece of paper. I am not going to interfere any more." He said, "O. k."

Q. That's all he said?

A. That's all.

Q. Do you know what was done with that paper?

A. I do not.

Q. Do you know that the same kind of paper or paper for the same purpose was being circulated in other departments?

A. I do not. Of course, I am not out of the other departments. You can't run around from one department to the other, you have got to stay where you belong.

Q. You went to the old employees in your department during working hours?

[fol. 902] A. Except Pintus, Joe Pintus, that is the only one. I asked during noontime; the rest, all at noontime, and he said he would let me know later and I didn't ask him after that.

Q. You didn't know much about what this association was, did you?

A. I didn't know anything about it. I didn't know anything about any union.

Q. Yet you did solicit signatures for it, didn't you?

A. I did that, yes.

Q. Knowing nothing about it, is that right?

A. Yes, that's right.

Mr. Bostwick: What crime is that?

Mr. Kleeb: Are you testifying, Mr. Bostwick?

Mr. Bostwick: No, I asked you a question.

Mr. Kleeb: If you wish to take the stand you may do so.

Mr. Bostwick: I would be glad to. When it gets to be my turn I will take it.

Q. Have you attended any association meetings since the petition was circulated?

A. Never, not to any.

Q. Have you paid any dues?

A. I did.

Q. Are you paying dues today?

A. Yes.

Q. You pay your dues regularly?

A. Yes, sir.

Q. But you have never attended any meetings?

A. Not to any.

Mr. Kleeb: That's all.

The Witness: Never.

Mr. Bostwick: That's all.

(Witness excused.)

Mr. Reed: Albert Marzolf.

ALBERT MARZOLF, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Mr. Marzolf, you are a foreman at the Heinz Company, are you?

A. That's right.

Q. In what department?

[fol. 903] A. Preserves.

Q. How long have you worked for the Heinz Company?

A. 28 years.

Q. There was a witness, Gajewski, some such name as that, here, that testified that you asked her to sign up an application petition for the Heinz Employees Association. Did you ever ask her to sign that?

A. I did not.

Q. Did you ever ask any employee to sign any petition?

A. No, sir.

Q. Did you ever tell any employee that they had to sign any petition or should join any union or not join any union?

A. I did not.

Q. There was a witness, Muscardin, who said she hadn't been treated the same since the strike as before. Is there any difference in the treatment of any of the employees since the strike?

A. None at all.

Mr. Reed: Cross-examine.

Cross-examination.

By Mr. Kleeb:

Q. How long have you been with the company?

A. 28 years.

Q. How long a foreman?

A. About 23 years.

Mr. Kleeb: That's all.

Mr. Reed: That's all.

(Witness excused.)

Mr. Reed: We have a different line of examination, entirely, to start now.

Trial Examiner Walsh: Me may as well adjourn until tomorrow at 10:00.

(Whereupon, at 4:30 o'clock p. m., November 23, 1937, the hearing was adjourned to 10 o'clock a. m., November 24, 1937.)

The hearing in the above-entitled matter was resumed, pursuant to adjournment on yesterday, at 10 o'clock a. m. Before:

J. Raymond Walsh, Trial Examiner.

[fol. 904] Appearances:

Robert H. Kleeb on behalf of the National Labor Relations Board.

Earl F. Reed, Esq., Donald W. Ebbert, Esq., and R. G. Bostwick, Esq., of the firm of Thorp, Bostwick, Reed, and Armstrong, 2812 Grant Building, Pittsburgh, Pennsylvania, on behalf of the respondent.

Proceedings

Trial Examiner Walsh: The hearings will come to order. Mr. Bostwick.

Mr. Reed: Mr. Bennett.

I. C. Bennett, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. You are Mr. I. C. Bennett, are you?

A. Yes, sir.

Q. You are an employee of the Heinz factory, I believe?

A. Yes, sir.

Q. It appears that a registered-mail letter that was sent to your address here came back with a return card signed "C. I. Bennett."

A. Yes, sir.

Q. Do you know how that happens?

A. Yes, sir. On October 29th when that was received at my home I had been at work that particular day and my daughter received that and they have a practice of calling me "Con" out home. It's part of my second name, Conrad, C-o-n-r-a-d, is my second name; Isaac Conrad Bennett is my name, and they just called me "Con" out home and she just signed it "C. I." instead of "I. C."

Q. The correct name is "I. C."?

A. I. C., yes, sir.

Q. What's your work at the Heinz plant?

A. Mechanic in the can department.

Q. How long have you worked for the Heinz Company?

A. 15 years on the 6th day of this month.

Q. What is the nature of your work?

[fol. 905] A. Grinding slitters, setting them up, and making whatever necessary adjustments are supposed to be made to those slitters to take care of the production of the tin that's being cut on those.

Q. You work from one machine to another, then, do you?

A. Yes, sir.

Q. Are you a foreman or assistant foreman?

A. No, sir.

Q. Are you paid on an hourly basis?

A. Yes, sir.

Q. Now a witness here testified that seven out of eight hours of your time is spent supervising. Is that correct?

A. No, sir.

Q. Do you do any supervision?

A. Sir?

Q. Is there any supervision in connection with your work?

A. No, sir.

Q. Do you wear a foreman's uniform, or what is a foreman's uniform?

A. That's something I can't answer, what a foreman's uniform is. During these testimonies I heard so many statements as to what some of them might interpret a foreman's uniform, but personally I don't know what a foreman's uniform is.

Q. Yes.

A. I wear clothes the same as anybody else around the plant and what they call a foreman's uniform, why, I don't know.

Q. You wear a cap, do you?
A. Yes, sir.
Q. A white cap?
A. Yes, sir.
Q. Do you have any power to discharge anyone or hire them?
A. No, sir.
Q. Do you have any power to recommend hiring or firing?
A. No, sir.
Q. Do you communicate wage increases to the men if they get them?
A. No, sir.
Q. Who does that?
A. Mr. Spangenberg, the foreman of the department.
[fol. 906] Q. Do you know what the other men in your department receive in wages?
A. No, sir. The first I knowed what they received in wages was when I heard a statement made here yesterday by one of the persons that was on the stand.
Q. Do you attend foremen's meetings?
A. No, sir.
Q. Do you get your uniform laundered at company expense?
A. No, sir.
Q. Do you occupy the foremen's locker room?
A. No, sir.
Q. Is there any respect in which you could be regarded as a foreman by any of the people that work there, as far as you know?
A. No, sir; as far as I know, no, sir.
Q. Were you permitted to vote at the election held by the Labor Board?
A. Yes.
Q. Who decided that?
A. Mr. Porter.
Q. Was he the Labor Board man in charge of the election?
A. What's that?
Q. Was he the representative of the Labor Board in charge of the election?
A. Possibly he was. He give me the right to vote after he got my explanation as what I done at the plant.
Q. Somebody objected, did they?

A. Yes, it was objected to.

Q. You are also president, I believe, of the Heinz Employees Association?

A. Yes, sir.

Q. Have you been president since its organization?

A. Yes, sir.

Q. And still are?

A. Yes, sir.

Q. What group of men, if you know, were responsible for the organization of that association?

A. You mean their names?

Q. Yes.

A. Myself and Frank Kirschner was the real two instigators of it, and then we got Mr. John Ubrey, or William Ubrey, I mean to say, and his brother, John, and Mr. Eddie Kranz, in on it.

Q. That was the original group, was it?

A. Yes, sir.

[fol. 907] Q. Are any of those people foremen or assistant foremen?

A. No, sir.

Q. Are they all workers?

A. All workers.

Q. Why did you organize this association?

A. Well, for the reason that I have always been connected with the labor organization to a certain extent from 'way back in 1918.

Q. What organization did you belong to?

A. The International Brotherhood of Boilermakers, Iron Shipbuilders & Helpers of America.

Q. Is that an A. F. of L. union?

A. A. F. of L. affiliation, yes, sir.

Q. And what did that have to do with your forming this association?

A. Well, I had been implicated in a strike in 1921 on the railroad—rather, in 1922, rather, I mean to say—on the railroads in the country at that time, and I contended at that time that we were sold out by the representatives or, in other words, the international organizers from the organization.

Q. You wanted a local organization, did you?

A. I seen where it was possible from that time that it should be controlled and operated by the particular em-

ployees from the department or from the plant in which they worked instead of having some outsider connected with it.

Q. Did you discuss this with these five men?

A. Yes, sir.

Q. And how did you proceed to organize?

A. Some time during the early part of January in 1937 I took it upon myself with Mr. Kirschner asking these other three gentlemen to a meeting at my house to discuss this proposition.

Q. And then how did you divide up the work of organization?

A. By holding three additional meetings after that there we outlined a policy that we thought that might be suitable to the employees of the plant and whereby giving each division a representator and outlining it in 15 divisions, thereby the plant would be more or less having a representator or thereby probably within a neighborhood of 125 employees under this representator. Therefore it would eliminate a lot of confusion by having a sweeper represent a mechanic [fol. 908] or an electrician representing a blacksmith or something of that sort. My policy was that the organization with these men is to unionize the representation amongst the employees of the plant, that they would know if they had a grievance to take up from that particular group of people, they would just know what those people had to contend with and how to handle it, instead of having some outsider, a butcher or somebody else, handle it that didn't know anything about it.

Q. You did prepare blanks for applicants to sign for this organization?

A. Yes, sir.

Q. And how were they distributed among the employees?

A. We decided we would handle those between our five original people that organized this group, by going around various times, during lunch period, and distributing these blanks to whoever we thought may be able to get signatures on there, as we had explained to some of them our intentions for this organization.

Q. Did any official of the company or any foreman or superintendent or anyone in a supervisory capacity advise the formation of this group or have anything to do with its organization?

A. No, sir.

Q. Now, in the original solicitation of membership was there solicitation in the plant? Did you solicit membership in the plant, while the people were in the plant?

A. Yes, sir.

Q. Was there any solicitation during working hours?

A. Yes, sir.

Q. Well, what happened about that?

A. It was called to my attention, not by any representator of the management or by any supervisor whatsoever but it was called to my attention by members of the A. F. of L. that we were soliciting members during working hours, and I asked them whoever give them to supervise this plant?

I says, "To my knowledge," I said, "I have never been questioned by any of the management that our group had solicited memberships during working hours, but," I said, "I have heard hearsay of that." I said, "I don't think you have got the authority to tell us to discontinue that until such time that we are reprimanded for it or probably discharged for doing so," I said.

[fol. 909] We just continued along those lines.

Q. Did the management object later? Did you have any trouble with the management about it later?

A. I understand that they did, yes, sir.

Q. What did they say about it?

A. I understood that they were told to discontinue doing any solicitation during working hours or on company property at any time.

Q. Did you know of any solicitation for membership in the A. F. of L. union during working hours?

A. Yes, sir.

Q. Do you know that?

A. Yes.

Q. Their solicitation, was it done by lists or application blanks or cards?

A. By individual application blanks.

Q. Did you get complaints of that?

A. Yes, sir.

Q. Now, then, you had public meetings, I believe.

A. Yes, sir.

Q. There was testimony here of a meeting in a church, you had, and then, later, in Carnegie Music Hall.

A. Yes, sir.

Q. Have you had a good many public meetings?

A. Two.

Q. Two public meetings?
A. Yes, sir.
Q. Have you had other meetings of your organization?
A. Yes, sir.
Q. Which were limited to your membership, I assume; the other meetings?
A. Yes, sir.
Q. Later, I believe, you engaged counsel, did you?
A. Sir?
Q. Later, I believe, you engaged a lawyer?
A. Yes, sir.
Q. Who did that?
A. Raymond L. McDonald.
Q. Who engaged him?
A. I engaged him.
Q. And he spoke at some of your meetings?
A. Yes, sir.
Q. I believe he represented you during the strike, in negotiations?
A. Yes, sir.
[fol. 910] Q. How many names were signed to your application blanks at the time you presented them to the management?
A. 1,383.
Q. Did you represent to the management that that was your membership?
A. Yes, sir.
Q. Now, when the strike occurred, tell us the beginning of the strike or what your first information of it was.
A. You mean the starting of the strike, on through?
Q. Well, how it first came to your attention, the strike.
A. Well, the first information that I got of the strike was possibly about, oh, I am safe in saying it must have been about half past 12:00 or 1 o'clock on Tuesday morning of May the 25th.
Q. Did you know prior to that that the A. F. of L. was going to call a strike?
A. No, sir.
Q. Did your membership concur in that strike?
A. No, sir.
Q. Was it opposed to it? Was your membership opposed to the strike?
A. That there was going to be a strike?

Q. I mean, did you oppose the strike?

A. We opposed the strike, yes, sir.

Q. I believe you started out right after the strike was called to organize your group to go back to work?

A. Yes, sir, we did.

Q. Was it possible for you to go back to work?

A. It was, providing that the outside interference that the A. F. of L. had there would have permitted them to get through the line. They just formed a continuous circle around there like a string of cord wound around the entrance of the main building there going into work.

Q. And did they march single file around there?

A. Yes, sir.

Q. How many men were around the entrance, in your opinion?

A. You mean on the picket line?

Q. Yes.

A. Oh, it is possible that there was in the neighborhood of, oh, I am safe in saying it would take for the line that they had at various times—it dwindled down from possibly 150 to 200.

[fol. 911] Q. Would it have been possible for your men to go to work without a fight?

A. Well, with the actions of the outside interference, I don't believe it would have been, or we would have went in.

Q. Did you call meetings of your membership during the strike?

A. Yes, sir.

Q. What demands did you present to the management during the strike?

A. During the strike in the proceedings of trying to make some adjustment?

Q. Yes.

A. Well, our demands was a certain amount for an increase in wages, vacation with pay after one year's service, one week's vacation with pay, and two weeks' vacation with pay after ten years or longer in service, time and a half for over time after a certain number of hours, an eight-hour day or a forty-hour per week, five days a week, and adjustment of other grievances or complaints that may come up in the future.

Q. I believe you demanded that an employee called out to work should get four hours' pay?

A. Yes, sir.

Q. When your first demand negotiations with the management were had during the strike, what position did the management take?

A. They informed us——

Q. Just a minute. Was that demand of yours made before the strike or after the strike?

A. We had our demands already set and went into meeting the management the day before the strike, and not knowing that there was going to be a strike, and we were told that we would have to take and produce the evidence that we represented the majority of the employees at that particular plant before the management could undertake to try to recognize us or negotiate anything whatsoever with us.

Q. Now, you were present, I believe, at various conferences during the strike which the Mayor and others tried to settle, the strike?

A. Yes, sir.

Q. What was the basis of the settlement that was discussed from the beginning?

A. Well, on the morning of the 25th——

Q. I just didn't intend to go through all of the details, but what was the thing that you were asking for?

[fol. 912] A. Oh, settling the strike?

Q. Yes.

A. Was having the Mayor to intercede some way that whereby he could take and bring about a fair settlement to all concerned by having a conference with our group and their group, having the management to sit in on it, and whereby agreeing to a fair election with both names on the ballot.

Q. You wanted an election with the two unions on the ballot?

A. Yes, sir.

Q. What was the position of the American Federation about that?

A. They plainly objected to that, would not have anything to do with it.

Q. They wanted only their name on it?

A. Only their name on the ballot.

Q. Now, that was the subject of negotiations over the period of the strike, was it not?

A. Yes, sir.

Q. And finally, when the Federal conciliators came, an agreement was made; it was decided to have the election with both unions on the ballot?

A. Yes, sir, after considerable discussion.

Q. I believe that you were brought over to the hotel and you had rooms, and the company had rooms somewhere else, and the A. F. of L. had rooms somewhere else?

A. Yes, sir.

Q. And there was a lot of negotiating back and forth?

A. Yes, sir.

Q. And finally an agreement was made which I believe you signed, did you not?

Q. I show you Board's Exhibit 16. I call your attention to the signature of the Heinz Employees Association.

A. Memorandum of understanding, yes, sir.

Q. That is the agreement that you signed to terminate the strike?

A. Yes, sir.

Q. And there was a stipulation signed at the same time for the Labor Board regarding affidavits that had been filed with the Board?

A. Yes, sir.

Q. You signed that, did you?

A. (Witness nods affirmatively.)

[fol. 913] Q. Did you know or did the company, to your knowledge, know at that time what affidavits had been filed with the Board?

A. We had some hearsay of it when Mr. McDonald and myself went before the Labor Board on the 25th, when Mr. Dunbar explained to us that it would be impossible to have any vote of any nature taken to determinate the collective bargaining group for that plant until probably sometime in the middle of July or early part of August on account of certain charges being filed there by certain individuals of the canning and pickle workers organization.

Q. But you never knew what the contents of those affidavits were?

A. No, sir.

Q. How many members do you now have in your organization?

A. Between 1050 and 1100 members.

Q. And do they pay dues?

A. Yes, sir.

Q. How much dues do they pay?

A. $2 a year.

Q. You are speaking of dues-paying members?

A. Yes, sir.

Q. When you give this number?

A. Sir?

Q. That is the number who are paying dues?

A. Yes, sir; they either pay by quarter or every six months or the year, if they wish to.

Q. There was a man named Hargraves mentioned in connection with this testimony. Do you know him?

A. Yes, sir.

Q. What is his job around the plant?

A. The only thing that I know, that he is a welfare worker, from the testimonies that I understand.

Q. Well, does he hire or fire anyone or boss anyone?

A. Not that I know of, no, sir.

Q. Now, was he a member of your organization?

A. Yes, sir.

Q. At its inception?

A. Yes, sir.

Q. Tell us about that.

A. At our first meeting that we ever had with any group of people outside of the five that originated this organization, was on May 6th, 1937, and Mr. Hargraves come into that meeting after it had been in session, and we were going [fol. 914] along there explaining the contents of our organization and why we feel that it was necessary to have an organization, when a man by the name of Mr. Novak come into the meeting, and he threw up his right arm in this order (indicating) and he says, "Don't you know you are violating the Wagner Labor Act by having such a meeting as this kind?"

And I looked at him and kind of smiled. I says, "Well, as far as I know, we are not violating any act regardless to whether it is the Wagner Labor Act or what act it is." I says, "I believe that as American citizens we are allowed to meet and discuss our own problems in an American way instead of having you or anybody else burst in on us and try to tell us what we should do and what we shouldn't do."

And I made the statement that I thought that he or anybody else should just take and hold theirself together until such time that the persons who are speaking are through

talking, and then we would let anybody else talk or ask anything that they wanted to ask.

I do recall Mr. Hargraves making the statement, that I think it was something along these lines, if everybody had his opinion they would have that man thrown out. "Well," I says, "it is my feeling about the thing, that we throw nobody out of this meeting because it is an open meeting, and we want you and everybody else just to keep quiet until we explain this thing, and you can ask whatever you want to ask."

Q. Did Hargraves have a membership card in your organization at first?

A. At that particular time, yes, sir.

Q. What happened? Did he discontinue to be a member afterward?

A. He had to be according to our constitution and by-laws.

Q. You mean after you adopted your constitution and by-laws he wasn't eligible?

A. No, sir.

Q. And was he dropped then?

A. Yes, sir.

Q. Did he have any part in the working up of this thing other than that first meeting?

A. No, sir.

Q. Where did you draw the line in your constitution and by-laws, in salaried employees?

A. Salaried employees, foremen, assistant foremen, or [fol. 915] office employees with the authority to hire and discharge.

Q. They were excluded?

A. Yes, sir.

Q. And that left him out?

A. Yes, sir.

Q. He is a salaried employee, I believe?

A. He is. The second last paragraph in that memorandum of understanding plainly outlines that, the second paragraph, that he even wouldn't be eligible to belong to our association.

Q. You refer to the paragraph——

A. Second last paragraph.

Q. "All production and maintenance employees, including storage and warehouse men except foremen, assistant

foremen, salaried employees, and office help, shall be eligible to vote''?

A. Salaried employees.

Q. That is the same——

A. That would answer for itself.

Q. That is the same rule that you had in your organization?

A. Yes, sir.

Q. Do you know Mr. C. O. Harris?

A. Yes, sir.

Q. What kind of work does he do?

A. Mechanical work.

Q. Similar to yours?

A. Well, it is possible that it is. It is mechanical work, but it is on a different type. He is just the liners and keeps them in repair and so forth, by taking broken parts off and assembling new parts to it, along those lines.

Q. He is not a foreman?

A. No, sir.

Q. Is his work somewhat like your work?

A. Yes, sir.

Q. With what organization does he belong?

A. It was my understanding that he had—Now, whether he belonged to the A. F. of L. or not, I am not in a position to say that, but he had been at their meetings from what I understand, and delivered speeches at various times. I also understand that he was in the picket line during the strike, but since that time we have converted him into our organization.

Q. He belongs to you- organization now?

[fol. 916] A. Yes, sir.

Q. Now, after the Federation refused to agree to an election with two parties on the ballot, and before this final agreement was signed, were you having negotiations with the management about your demands, your wage increase, and that sort of thing?

A. Yes, sir.

Q. How many such meetings did you have, approximately?

A. Well, possibly in the neighborhood, oh, I am safe in saying it was—there was four continuous meetings that I recall of. It lasted over a period of about, oh, possibly 60 some hours.

Q. Late into the night and almost all night sometimes?

A. Yes, sir.

Q. Who were the representatives of the company who were dealing with you in that matter?

A. Mr. Riley and Mr. Shinabarger.

Q. And who was your bargaining committee?

A. Myself, and Mr. Arthur Ramming, Mr. Harry Zimmerman, Mr. Bernard Rooney, and Mr. William Sipple.

Q. Did the company agree to all of your demands, or did you argue about them?

A. Oh, argue. That was the reason it took us quite a little time to get some adjustment, was due to the arguments between the group and the management.

Q. Did you demand a written contract between your association and the management?

A. Yes, sir.

Q. What position did the management take?

A. They felt that they wouldn't go along with us on it.

Q. I believe finally you accepted an announcement by the company?

A. We still argued for them to sign a written contract, but they couldn't go along with us on it.

Q. I believe at one stage during the strike, I think about Friday, the company announced that they would recognize your organization?

A. Yes, sir, the 28th day of May, I believe it was.

Q. And they announced that in the newspapers, I believe?

A. Yes, sir, that come out on a Saturday morning on the 29th.

[fol. 917] Q. Now, you finally made an agreement which gave you considerable concessions in wages, working conditions?

A. Yes, sir.

Q. And was it then after that that this election was held?

A. I believe, yes, sir.

Q. These men never did go back to work under the agreements that you reached with the company?

A. No, sir.

Q. And your party was defeated at the election?

A. Yes, sir.

Q. Since that time have you had any negotiations or any meeting with the management?

A. No, sir.

Q. Have you had any contact with them at all?
A. No, sir.
Q. You have accepted the defeat?
A. As a good American.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. And you have been with the company 16 years, haven't you?
A. 15 years on the 6th day of this month.
Q. And the job you now hold you have been doing for how long?
A. Well, in fact, I am safe at saying since 1926.
Q. And prior to that you were what?
A. I originally hired out there for the can department, working on the slitters, cutting tin.
Q. You were cutting tin yourself?
A. Yes, sir.
Q. You cut tin?
A. Yes, sir.
Q. And then from there you did what?
A. I learned this work as I worked there, watching the gentlemen that used to do the grinding and setting up the slitters, and paid particular attention as to how he done it, and I like the work that way and I advanced into that.
Q. That was about 1926 that you were——
A. 1926, yes, sir.
Q. So that by working in that department a number of [fol. 918] years you learned how to do the work you are doing now and as a result of that the company advanced you to the position you now hold, is that right?
A. As a mechanic.
Q. Yes.
A. Yes, sir.
Q. How many machines are you responsible for?
A. Well, I don't know as I am responsible for any outside of there is 20 slitters there to be ground and adjusted from various times.
Q. And how many girls work on these machines or slitters, as you call them?

A. Well, there is—sometimes there may be one and sometimes there may be two; it just depends on what kind of tin the department needs.

Q. I said girls. Are there girls or fellows working on these machines?

A. Girls, from time to time, but no girl works by herself on them.

Q. And how many fellows are there that run these machines?

A. Oh, possibly in the neighborhood of about six or seven.

Q. That is on each or all of them?

A. On all of them, because they ain't all operating at the same time.

Q. And the girls are doing what kind of work?

A. They do the feeding in on these here cross-cutting machines.

Q. Feeding in the tin?

A. The tin, yes, sir.

Q. And what kind of work do the fellows do that work on these machines?

A. He takes and packs the tin and see that there is no long or short tin in it. After his load is packed he moves it away to the place where it is supposed to go, and puts another load in the back part of the machine so the girl can feed the other load in.

Q. And your job is to see that these machines are operating and operating properly?

A. When there is a breakdown.

Q. That's what I mean.

A. Yes, sir.

Q. And if anything goes wrong with a machine a girl or one of the fellows will call you to fix it?

A. Not all the time.

[fol. 919] Q. What is the practice?

A. Go to the foreman and explain to the foreman, and then the foreman tells me to do it.

Q. So the foreman, in some instances the foreman will tell you to do it and in other instances the employee will come directly to you?

A. The employee can't find the foreman, yes sir.

Q. And you find yourself occupied all the time on these machines, do you?

A. Yes, sir.

Q. Keeps you pretty busy all day, doesn't it?

A. At times it does.

Q. And if you are not busy, if you don't have any work to do, what work—what are you doing?

A. I do whatever the foreman tells me to do.

Q. Around the department?

A. Around the department. Sometimes I, for instance,—our tin plate, I have to see that the stock is on that there. He will tell me to go count the tin plate and give him a report on it, and along those lines, say.

Q. You testified that you didn't know anything about wages until you heard some testimony in this room.

A. Yes, sir.

Q. It is a fact, is it, that the Heinz Company has a policy that its employees are not to tell other employees their wages?

A. I don't know that there is.

Q. You never had such instruction?

A. No, sir.

Q. You were never told not to tell anybody else what you were earning per hour?

A. No, sir.

Q. What do you earn per hour?

A. 85 cents.

Q. You were challenged, were you not, challenged in the Labor Board election on June 8th of this year, by an A. F. of L.——

A. I don't know whether you would call it a challenge, or not. I was questioned by Mr. Koontz and Mr. Novak at the election.

Q. But they asked to challenge you- vote?

A. They asked to, yes.

Q. And Mr. Porter permitted you to vote?

A. As I explained, he asked me what I done, and I told him.

[fol. 920] Q. You testified you were a member of what A. F. of L. union back in nineteen-twenty-something?

A. The International Brotherhood of Boilermakers, Iron Shipbuilders & Helpers of America.

Q. And you were a member of that union how long?

A. From, possibly, 1918, up until October the 31st, 1924.

Q. Is that the only A. F. of L. union you ever belonged to?
A. Yes, sir.
Q. During that time, other than the strike you mentioned were you ever in a strike with that union?
A. With that other union?
Q. Yes.
A. Yes, sir.
Q. More than once?
A. Just the once.
Q. Just the one time?
A. Yes, sir.
Q. That's the only strike experience you have had?
A. Yes, sir. You mean prior to this one?
Q. Oh, yes.
A. Yes, sir.
Q. I am talking about at that time when you were a member of that union.
A. Yes, sir.
Q. You testified that you were of the opinion that the representatives of that union sold out the employees.
A. Yes, sir.
Q. That union is in no way affiliated or connected with the Amalgamated Meat Cutters and Butcher Workmen of North America, is it?
A. Other than it comes under the American Federation of Labor. Every organization that is affiliated with the American Federation of Labor, to my understanding with the A. F. of L. by-laws, they must be affiliated some way or other.
Q. We will admit the union you belonged to in 1920 is affiliated with the A. F. of L. and we will also admit that the Amalgamated Meat Cutters and Butcher Workmen of North America is also affiliated with the American Federation of Labor.
A. Yes, sir.
Q. Yes. But you do know, do you not, that both of those organizations are separate organizations? That is, they have their own separate control of their respective locals?
[fol. 921] A. To a certain extent.
Q. Well, now, to what extent don't they?
A. The A. F. of L., in order to make the A. F. of L. up, takes in all these various organizations where you say they are affiliated with the A. F. of L. These various organizations that are affiliated with the A. F. of L. as what is

known, probably, sometimes it might be their president of their international organization or it might be somebody else elected from that particular affiliated organization that comprises the council of the A. F. of L., and when the A. F. of L. has their various conventions all of these affiliated organizations are invited to that convention with their delegates.

Possibly, some time, this representator might be the one selected. It's, possibly, sometimes the various organization might elect somebody else as delegate to that convention.

Q. But I mean, Mr. Bennett, in the operation of the respective international unions affiliated with the A. F. of L., they run themselves, don't they?

A. To a certain extent, Mr. Kleeb.

Q. Yes. All right. But they each have their separate constitutions?

A. Yes, sir.

Q. And each local of each international operates under the constitution of that international, does it not?

A. Yes, but neither one of those constitutions are allowed to conflict with the A. F. of L. constitution.

Q. Well, jurisdictionally.

A. Yes, sir.

Q. How were you sold out, by representatives, or how?

A. What's that?

Q. How were the employees sold out?

A. Well, prior to the strike of the organizations that was affiliated with the Railway Employees' Department of the A. F. of L., over 400,000, they voted to take a strike, and it was practically, oh, I would be safe to say 90 per cent of the employees at that particular time voted in favor of that strike.

It was agreed at the convention of the Railway Employees' Department that should go into effect July 1, 1922. After being on a strike for a certain period of time the Railway Employees' Department of the A. F. of L. notified the president of each system federation that has the various organizations throughout the country on these yari-
[fol. 922] ous railways to go back and try to negotiate a separate agreement with their employees and the management of that particular railroad, and the result was that quite a number of the railroads would not meet with the employees or their representators of the employees by

having a separate agreement or having a national agreement which they used to have prior to such strike, and it was my contentions that after the members had voted in favor of that strike they should have been given some authority or some opportunity to say whether they should go along and agree to have a separate agreement, instead of the representators from the Railway Employees Department coming back and telling us to do so, because we instructed them what to do and how to carry it out and still they come back and violated what had already been agreed upon at the convention.

Therefore, it was my belief and is still my belief that when such group of people do that to you and the people that they represent, that they actually are selling you out.

Q. And for that reason you have, since that time, had a dislike for the American Federation of Labor, have you not?

A. Under those circumstances, yes, sir.

Q. And you have kept that dislike up to the present time, have you?

A. Yes, sir.

Q. Because of that experience you started the Heinz Employees Association this year?

A. Not just exactly; I would say not because of that experience, but that had a whole lot to do with it.

Q. Isn't that what you told Mr. Reed? He asked you why you started the association and you gave him that experience.

A. Yes, but there is other things that have developed during this time that have led me also to believe that the employees which we had formed with our association should have one of their own, sure.

Q. After your experience with that strike and that selling-out contention of yours, subsequently you went to work for the Heinz Company?

A. Yes, sir.

Q. Did you at anytime prior to this year organize any union or organization or bargaining agency at the Heinz plant among the Heinz employees?

[fol. 923] A. No, sir.

Q. You knew the National Labor Relations Act was in effect from 1935, didn't you?

A. Yes, sir.

Q. Now, what other reasons—your intimate there are other reasons that caused you to form this association besides your experience with the A. F. of L. and your dislike for the A. F. of L. What were those other reasons?

A. Well, I believe that it's possible for to take and bring other people of any particular plant, your own belief of the conditions that, I think, that questions that arise can be settled without having anybody on the outside dictating to you, radicals and so forth, and calling them out on strike, and along those lines. I believe that the arbitration should be fetched about without having a strike; which it can be.

Q. You weren't satisfied with your employment at the Heinz', were you?

A. Yes, sir, I was.

Q. Why did you think it was necessary to have an organization of employees? If you were satisfied, why were you at all interested in organization?

A. Well, for the simple reason, why after the Wagner Labor Relations Act was passed and declared Constitutional by the Supreme Court it seemed to be an epidemic throughout the country of various groups forming these organizations and causing a lot of discontent and strikes and so forth and I understood the testimony of the gentleman that was on the stand on Monday morning, in 1936, that 50 per cent of the strikes occurred over recognition or unionization, of that sort.

The first six months of 1937 54 per cent of the strikes occurred over those conditions, and, such being the case, that I felt, being experienced with an organization previous to ever working there, that if we employees didn't try to form an organization of our own and explain to the people that we can conduct an organization along the same lines on practically $2 a year, where it would cost them, at the average, from $18 to possibly $24 a year for just dues, not taking into consideration for assessments that might be rendered on them from time to time.

Q. You had sort of a philanthropic idea, didn't you? That is,—well, strike that.

Then, because the Wagner Act was upheld by the Supreme Court of the United States and because of this epidemic of strikes going over the country after that, had [fol. 924] you decided to organize this independent? Is that right?

A. No. We had the thought in mind before the Supreme Court declared the act Constitutional.

Q. What started you to think about it at the time you did?

A. For the simple reason, why, I realized that when the Supreme Court declared the N. R. A. unconstitutional and the Wagner Act was instituted, and with the discontent that I followed in the newspapers, of the increasing of the judges on the Supreme Court bench, I felt that the judges on the present Supreme Court bench would declare the Wagner Labor Relations Act Constitutional.

Q. But that law was never passed.

A. How is that?

Q. But that law was never passed, was it?

Q. That's true, but they declared the act Constitutional.

Q. You didn't think of this association in 1935, did you? You didn't start to form it in 1935, did you, after the Wagner Act was passed?

A. No, because the Wagner Act——

Q. Wait. You didn't, did you?

A. No, we didn't start in 1935.

Q. And you didn't in 1936, did you?

A. No.

Q. You did in 1937?

A. Yes.

Q. And when, in 1937?

A. In the early part of January.

Q. Then I am to understand, we are to understand it was because of the Wagner Act and because of the plan to increase the judges on the Supreme Court and because the Wagner Act was upheld, all those reasons you have given, were the reasons for forming this association; right?

A. Yes, sir. As I said, the discontent, the epidemic that was going over the country, that's as far as these labor organizations was concerned, that, you know, during the depression years the A. F. of L. and nobody else come out or tried to get the people of this country organized into any particular labor organization; they all set back and left the thing go, but, when the upturn came and the depression [fol. 925] was practically at its end and people was receiving more money due to the fact that the manufacturers and so forth had increased their profit and they were giving the people increases in wages without various organizations, then the A. F. of L. and some of these other

so-called labor organizations steps out and wants to get this money right back off of them by paying organizers and high dues and things of that kind into these various organizations.

Q. At the first part of January or in January of this year, when you got this sudden idea to form an association did you know that the employees were organized under the banner of the American Federation of Labor?

A. Did I know?

Q. Yes.

A. Before January?

Q. No, when you started with Kirschner to organize this association?

A. That was in January.

Q. I say, did you know?

A. No.

Q. At the time you started this organization, you personally did not know that the employees were beginning an organization under the American Federation of Labor?

A. No, sir.

Q. Knew nothing about it?

A. No, sir.

Q. Why did you pick on Frank Kirschner to assist you?

A. He is an old A. F. of L. member of the International Association of Machinists, affiliated with the American Federation of Labor.

Q. And you knew that he also claims to have had a sad experience with that organization? Right?

A. During the strike period, yes, sir.

Q. He dislikes the A. F. of L., doesn't he?

A. I presume he does.

Q. Well, he has spoken to you, hasn't he, Mr. Bennett?

A. How is that?

Q. He has spoken to you about it?

A. The treatments, and so forth?

Q. Yes.

A. Yes, sir.

Q. And he doesn't speak with favor about it, does he?

[fol. 926] A. Well, I wouldn't say he does, no.

Q. Mr. Kirschner has worked for Heinz a long time, hasn't he?

A. Yes, sir.

Q. And he is a man up in years, that is, older than you are?

A. I imagine he is.

Q. Say a man about 50?

A. I don't know how old he is.

Q. When you solicited him, what reason did you have in your mind for picking him other than the one you have mentioned?

A. Well, it is a policy—I really believe if you are going into anything and you have an idea that anybody that is near you or working around you knows something along the lines that you are trying to go into or form, it is my policy always to try and consult them and pick out the best that you think you possibly can pick. I believe you would do likewise.

Q. Well, did you, when you solicited Frank Kirschner to assist you, know at the time about his A. F. of L. experience?

A. Yes, sir.

Q. You had known that for sometime?

A. Yes, sir.

Q. Wasn't that one of the main reasons why you picked him?

A. He is an experienced man along affiliation connections, as far as organized labor is concerned.

Q. Then after the two of you discussed this thing, you decided you needed some more helpers, didn't you?

A. Yes, sir.

Q. And you solicited John Ubrey?

A. William first.

Q. William Ubrey?

A. First.

Q. And then John Ubrey?

A. Yes, sir.

Q. Then Edward Kranz or Grznkowski?

A. Yes, sir.

Q. In that order?

A. Yes, sir.

Q. Why did you select William Ubrey?

A. He also is an old A. F. of L. member belonging to the International Association of Machinists.

[fol. 927] Q. Did you also know he had a sad experience with the A. F. of L.?

A. I presume he did.

Q. Did he ever tell you that he did?

A. Yes, sir.

Q. And you knew that at the time you went to him, didn't you?

A. Yes, sir.

Q. And he is a man who has worked for Heinz a long time?

A. Yes, sir.

Q. And you next selected his brother William?

A. John.

Q. Or John. Pardon me.

A. Yes, sir.

Q. He is known as Buck Ubrey?

A. No, Buck is William.

Q. William is known as Buck Ubrey, and his brother is John?

A. Yes, sir.

Q. And you went and got John Ubrey next?

A. Yes, sir.

Q. Now, why did you pick William Ubrey's brother John as one of your helpers?

A. He is an old employee of the firm, been in the service quite a number of years, I believe in the neighborhood of 28, 29 years, something similar to that, and I felt that if he didn't know the majority of the people of the plant for his years of service, nobody else ought to.

Q. That was the reason for your picking him?

A. Yes, sir.

Q. And then you next picked Edward Grznkowski, alias Kranz?

A. Yes, sir.

Q. He is a young fellow too, isn't he?

A. You mean in service?

Q. No, young in years? About 30?

A. I don't know how old he is. You can never tell.

Q. How old would you guess he is?

A. I would say he is about 34.

Q. And what about his service record? Is it very long or short.

A. Possibly 16 years.

Q. And his job takes him all through the entire factory? Does he not go from department to department and from [fol. 928] building to building?

A. Yes, sir.

Q. That is the very nature of his work?

A. Yes, sir.

Q. He tests glass or something of that sort, doesn't he? Or change glass bulbs or things like that?

A. No, sir.

Q. What is his job?

A. He works in the glass testing department, I believe, where they inspect the jars, that, is, bottles, and so forth, as that there, or handles, scales and stuff.

Q. And why does his job take him all over the plant?

A. Well, due to the fact that he takes care of scales, and that there, and he may be called from any particular department of the plant for to come and get a scale and adjust it and go over it, repair it, and then take it back to that department.

Q. Well, tell us what caused you and the other three men to pick this fellow of all the fellows that work out there as the fifth man?

A. Well, as I said before, it is the policy to try to pick out the best you can and try to get ahold of people that can control theirself and not get excited when any question may come up, as to trying to explain it and seeing that it is explained clearly.

Q. Did any of these other men, Kirschner or the Ubreys work in the glass testing department?

A. No, sir.

Q. And the reasons you have given are the only reasons that Ed Kranz was selected?

A. Oh, being able to control himself and speak, and so forth.

Q. How did you get to know him so well? You are not in his department?

A. No, sir.

Q. How did you know all of these qualities that he has?

A. Well, I have seen him come through taking scales down from various departments, when I would be going to or from lunch or maybe going home in the afternoon, and working there for fifteen years, at least I ought to know quite a number of people.

Q. You felt you knew him well enough that he had all of these qualities; is that right?

[fol. 929] A. Yes, sir.

Q. And you picked him as the fifth manager committee?

A. Yes, sir.

Q. Over what period of time did it take for you to get these five people rounded up into a committee? Was it a month or two months or what?

A. Oh, I would possibly say in the neighborhood of about two weeks.

Q. And that was done when?

A. The early part of January.

Q. The first open meeting you had was, I think, at the Lutheran Church across from the Sarah Heinz house on East Ohio Street?

A. Yes, sir.

Q. That was, I believe, April 26th?

A. May the 6th.

Q. May the 6th?

A. Yes, sir.

Q. Well, somewhere thereabouts. Up to that time had just the five of you been meeting?

A. Yes, sir.

Q. At your respective homes?

A. Yes, sir.

Q. Talking about this thing?

A. Yes, sir.

Q. And up to that time you had not solicited any members or had any public meetings?

A. Not any public meetings, but we had solicited members.

Q. Up to that time had you a lawyer?

A. Up until that time we engaged one for that particular meeting.

Q. But up to that meeting you had no lawyer?

A. No, sir.

Q. Did you have a constitution prior to that first meeting, May 6th?

A. No, sir.

Q. Did you have any by-laws?

A. No, sir.

Q. Did you have any framework of an organization at all?

A. Other than preliminary, as I explained it to you before.

Q. And you were soliciting members to that preliminary organization?

[fol. 930] A. Yes, sir.

Q. Did you have any membership cards or application

slips or petitions in circulation or printed or typed prior to that May 6th meeting?

A. Yes, sir.

Q. By the way, how much to the cause did you contribute out of your own pocket?

Mr. Reed: Objected to as incompetent and immaterial.

Trial Examiner Walsh: Sustained. You need not answer.

By Mr. Kleeb:

Q. Board's Exhibits 7, 8, and 9, 7 being a petition, 8 being a membership card, and 9 an application slip—were they prepared by you or your organization?

A. They were prepared through my instructions; yes, sir.

Q. Were they in existence, all three of those exhibits or papers and cards like those, prior to the May 6th meeting?

A. This here one is a typewritten one and was in existence prior to the May 6th meeting.

Q. That is Board's Exhibit 7?

A. Yes.

Q. Yes. What about the membership card, that yellow card?

A. That only come in existence after the May 6th meeting.

Q. And that is Board's Exhibit 8.

Now, what about Board's Exhibit 9.

A. This printed form only come in existence after the May 6th meeting.

Q. And you also had printed, did you not, instead of typewritten, a petition like Board's Exhibit 7?

A. Like this here one, yes.

Q. Printed?

A. Prior to the May 6th meeting.

Q. Printed?

A. Yes, sir.

Q. And so prior to the May 6th meeting you had not only typewritten petitions like Board's Exhibit 7, but you also had printed petitions?

A. Yes, sir, like that large one.

Q. Yes, like Board's Exhibit 7.

A. Yes.

Q. That is the only written or typewritten material that [fol. 931] this organization had prior to the May 6th meeting, isn't it?

A. Yes, sir.

Q. Who did the printing?

A. Markview Printing Company, or Markview Publishing Company.

Q. Where is that?

A. On Hare's Island.

Q. Market Review, isn't it?

A. Market Review, is that it?

Q. Well, is it?

A. I believe it is. I will tell you in a few seconds.

(The witness consults a bill.)

A. Market Review Publishing Company, Hare's Island, Pittsburgh, Pa.

Q. That is, of course, the same printing place that does a good bit of the Heinz printing, isn't it?

A. I don't know.

Trial Examiner Walsh: Mr. Reporter, you will note the fact that he consulted——

What was it you consulted, a bill or a record of your organization?

The Witness: Sir?

Trial Examiner Walsh: What was it you just consulted to find out the name of the printing company? You looked at a paper. What was it?

The Witness: Why, it is the bill from those people.

Trial Examiner Walsh: Will you note the fact, Mr. Reporter, please?

By Mr. Kleeb:

Q. So that the application slips, those little white slips, Board's Exhibit 9, and the printed petitions like Board's Exhibit 7, except they were printed, were printed at this Market Review on Hare's Island in Pittsburgh?

A. Not the application cards, not no membership cards, rather.

Q. I mean, not the membership cards, the application slips, the small white slip?

A. Yes.

Q. Yes?

A. They were.

Q. As well as the long petition?

A. Yes, sir.

Q. How were the funds raised to pay for these things?
[fol. 932] A. Through us five. We chipped in so much money to pay for this stuff until such time we seen that our membership was paying dues, and then we received that money back.

Q. Now, you say that you received the money back from the treasury of the association?

A. Yes, sir.

Q. And you also stated that you directed the printing of these petitions and papers?

A. Yes, sir.

Q. You went to the Market Review?

A. Called them up.

Q. And told them what you wanted?

A. Yes, sir.

Q. Did you draft the wording of it yourself?

A. Yes, sir.

Q. I believe Attorney R. L. McDonald was present at the May 6th meeting at the Lutheran Church across from the Sarah Heinz house on East Ohio Street; was he not?

A. Yes, sir.

Q. Who got him to come to that meeting?

A. I did.

Q. Personally?

A. Through the organization, that is, through the representatives. They authorized me that it would be advisable to have a legal adviser.

Q. What representatives?

A. Our five original ones that started this.

Q. You had a meeting and you decided that you ought to have an attorney?

A. That is what they advised me to do.

Mr. Reed: It is always advisable.

Mr. Kleeb: I wonder sometime.

By Mr. Kleeb:

Q. Why did you consider legal counsel at that time necessary?

A. In trying—I really believe that forming any kind of an organization or going into any business of any sort, that it is always best to have some legal advice, to try to do so.

Q. Did you know Mr. McDonald prior to the time you went to his office?

A. I didn't go to Mr. McDonald's office.

Q. Where did you go?

A. I got him on the telephone.

Q. Did you know him personally before you telephoned [fol. 933] him?

A. No, sir, not personally.

Q. You never saw the man before?

A. No, sir.

Q. You didn't know whether he was a young man or old man, did you?

A. No, sir.

Q. How did you happen to call him?

A. Well, I belong to a certain organization that takes me out a great deal, and being at one of their affairs, I overheard a conversation that they have a man representing them, and his name was Raymond L. McDonald, and I grasped it at their conversation and felt that it might sometime come in handy to our group if we ever get it organized.

Q. Do you mind telling me the name of this certain organization you belong to?

A. Yes, sir. I am president of the Baldwin Independent Fire Company of Baldwin Township.

Q. And it was at a meeting of that group?

A. No, sir; it was at a bingo outing at the Swissvale Volunteer Fire Company, has been holding for the last several years on Monday and every Thursday night.

Q. And it was at one of these that you overheard this?

A. At one of those gatherings, yes, sir.

Q. When was that, sometime in the early part of this year?

A. It was sometime in the early part of this year, yes, sir.

Q. And so you kept that name in your mind and when the occasion arose, you telephoned this man; is that right?

A. I didn't keep his name in mind. I wrote it right down and had it right with me at all times.

Q. Did you know when you overheard this conversation what association these people were referring to?

A. Yes, sir.

Q. What was that?

A. The independent organization from the Union Switch & Signal.

Q. Union Switch & Signal Company?

A. I suppose that would be it.

Q. And these people you overheard were referring to the fact that McDonald represented the independent associa-

[fol. 934] tion of that company?

A. Yes, sir.

Mr. Reed: That is, employees association?

The Witness: Employees organization.

By Mr. Kleeb:

Q. Employees association at that company?

A. Yes, sir.

Q. Well, at the time you heard that conversation, had you yet begun your meetings with Kirschner?

A. We already had our meetings in progress.

Q. Yes. And you contacted Mr. McDonald, and what did you tell him?

A. I told him that we had five of us meeting for a period of in the neighborhood of probably three months or so at the present time, and I happened to be attending a bingo at the engine house and overheard his name being mentioned as the legal adviser for the independent organization of the Union Switch & Signal Company, and not questioning anybody at that gathering, I took his name down and got in touch with him that way.

Q. Did you tell him at that time in the telephone conversation that you wanted him to come to this meeting on the 6th of May?

A. Yes, sir.

Q. And you didn't talk to him then between that time and the time he appeared on the scene over at the church?

A. No, sir.

Q. Just that one occasion you talked with him?

A. On that one occasion.

Q. Getting back to these petitions that you had printed and also typed, why were some typed and some printed? What is the explanation for that?

A. Well, for the simple reason why we did not have the opportunity for to get right out and get the printing done, and after we decided to go through with this thing, I says to those other four gentlemen that was with me, I says, "Well, we will just have my daughter knock a few off on

the typewriter here and get started in that way." And that was done at home.

Q. Can you fix the time before the May 6th meeting that you started these petitions around to be signed, that is, [fol. 935] when with reference to the May 6th meeting?

A. Well, possibly around, oh, it might have been the middle part of April, something around there. It might have been a day or two later, I don't know.

Trial Examiner Walsh: Mr. Kleeb, will you interrupt your cross-examination at a convenient point so we may have a short recess?

Mr. Kleeb: At this time.

Trial Examiner Walsh: Is it all right at this time?

Mr. Kleeb: Yes.

Trial Examiner Walsh: Ten minutes.

(A short recess was had.)

Trial Examiner Walsh: The hearings will come to order. Proceed, Mr. Kleeb.

By Mr. Kleeb:

Q. In your telephone conversation with Mr. McDonald was any arrangement made between the two of you about the remuneration of the association to the attorney?

A. Yes, sir, there was. I give him the reason why we wanted to have him over there.

Q. No, I mean—perhaps I didn't make myself clear. Was any understanding reached as to what Mr. McDonald was to receive for the services rendered; at your telephone conversation; during your telephone conversation?

A. No, sir.

Q. Nothing was mentioned by him or by you with reference to how much he was to receive?

A. No, sir.

Q. Merely agreed to come over and speak at this public meeting?

A. Yes, sir.

Q. Did you tell him what it was all about; why you wanted him and what you wanted him to say?

A. Partly, not all; partly.

Q. Just tell us what you recollect you said to McDonald on the telephone.

A. I just told him we had already started to form an association. "We are going to have a meeting with a group of employees" and we would like to have him over, due to the fact that I heard he was handling a similar affair of that particular nature and I asked him if he wouldn't come over and give us some legal advice on it and, practically, [fol. 936] that's all I can recall of.

Q. And you talked to him for about what, three or four minutes, on the telephone?

A. Well, possibly that.

Q. Yes. And he has been your attorney ever since that meeting of May 6th, hasn't he?

A. Yes, sir.

Q. And he is your attorney at the present time?

A. Yes, sir.

Q. Is he on a retainer, that is, a yearly, annual retainer; so much a year, or do you pay—does he get paid for services rendered?

A. No, sir, he is not on a yearly basis.

Q. Is the pay as services are rendered?

A. If we have the money to give him we pay him as we go along. What I mean, he has set his price for us and we pay him.

Q. And, if you don't have the money, like a lot of attorneys, he waits; is that it?

A. Well, that's natural.

Q. Tell me this: Up to that meeting of May 6th or by the time you had that meeting of May 6th do you know approximately how many people had their names, had signed their names to these typewritten and printed petitions?

A. Yes, I do.

Q. About how many?

A. Possibly in the neighborhood of about 650 or so, along in there.

Q. And that gradually increased up to the time of the strike, when you had, I believe, 1,383?

A. 1,383, yes, sir.

Q. There weren't 600-and-some at the meeting, however, were there?

A. At that first meeting?

Q. Yes.

A. No, sir.

Q. So all that signed didn't attend?

A. That's possible.

Q. Well, it had to be, if you didn't have 650 there.

A. Sure.

Q. You spoke at that meeting, didn't you?

A. Yes, sir.

Q. And McDonald spoke?

A. Yes, sir.

[fol. 937] Q. Prior to this meeting what was your program for getting signatures? I believe you said something about it on direct examination but I would like you to go into that. How did you go about getting signatures to these petitions?

A. You mean on these typewritten petitions?

Q. And printed.

A. Why, after we agreed on our last meeting we had at our home of getting these here petitions out, we agreed that we would give these petitions out to various people throughout the plant.

We felt that after talking to them, at various times prior to this May 6th meeting, by giving them to some of them, that we would be able to get signatures on these petitions, which we did.

Q. Tell me this, Mr. Bennett: What was the determining factor in choosing the employees who were to get signatures on these petitions? I mean, how did you decide who you were going to give petitions to?

A. Well, we didn't pick out any individual here or there. We left it up to us five to give these out to various ones in various departments, at times, during lunch period, going to and from work in the morning and evening——

Q. Yes.

A. —and along those lines.

Q. In other words, the five of you didn't sit down and list the people to give petitions to take around?

A. Oh, no, sir.

Q. Each of the five took it upon himself to select whom he saw fit to select and gave petitions to, is that right?

A. After these particular people, whoever they may have been, were spoken to about us trying to form this association.

Q. But each of you five was to do that, explain it?

A. Yes, sir.

Q. Then give that person the petition to get signatures on it?

A. Yes, sir; if that person chose so to help.

Q. Yes.

A. Yes, sir.

Q. Why did you have printed both a petition and the small application, the small sheet with the same wording on it as the petition?

A. Yes, sir.

Q. What was the reason for that?

[fol. 938] A. We have been notified by various ones that had these larger petitions that some of the employees had not cared to sign the big ones, due to the fact they didn't want to let somebody else see their name on it, We agreed to have individual applications, that is, them small ones——

Q. Yes.

A. —printed and be given out. Thereby no party would know who signed these, only those that was the officers or representators or those that was collecting them.

Q. By the way, how much was that printing bill? Do you know, offhand?

A. All told, $6.50.

Q. Was that paid prior to the May 6th meeting?

A. No, sir, paid after the May 6th meeting.

Q. When was it paid? What month?

A. We only received the bill on May the 10th. Now, get this clear: The bill to these people has been paid but the ones that paid the bill only received the amount after our May 6th meeting.

Q. The bill was paid, the printer, before the May 6th meeting?

A. The amount of stuff that was issued to us through the printer was paid, yes, but we received no bill from the printer until about May 10th.

Q. But the five men contributed——

A. Paid that amount, $6.50, yes, sir.

Q. —and then later on were reimbursed by the association?

A. Yes, sir.

Q. Then you had a meeting at Carnegie Hall May the 11th?

A. Yes, sir.

Q. And at that meeting did you make this statement: "We have had such pleasant relations with our employer

for so many years, and working conditions are so satisfactory, that we feel we loyal employees should organize to keep for ourselves the advantages we have had for so long. We are fully informed of our rights and privileges as granted by the Wagner Laws and are organizing in order to formally and collectively deal with the management of the company and to continue the friendly relations that exist between ourselves and the H. J. Heinz Company."

A. Yes, sir.

Q. You made that statement?

[fol. 939] A. I made that statement.

Q. Was that to the group at the May 11th meeting?

A. Yes, sir.

Q. In the Carnegie Music Hall?

A. That I made that statement?

Q. Yes.

A. Yes, sir.

Q. What do you mean, in that statement, by "loyal employees"?

A. For the simple reason, why, it has always been my feeling, ever since I entered at employment of H. J. Heinz Company that I, at no time, ever did see where the management mistreated or ever heard of the management mistreating any individual for any unjust cause.

Q. Did you think—At that time did you think an employee who did not join your association and who did join the A. F. of L. was not loyal?

A. Say that again.

Mr. Kleeb: Read that.

(Previous question read by the Reporter.)

A. In other words, you mean that it's my understanding or do I think that because an employee joined the A. F. of L. that he was disloyal to the management?

Q. Yes.

A. No, sir.

Q. You didn't think that?

A. No, sir.

Q. A man, then, in your opinion, can still be a loyal employee and yet belong to the A. F. of L?

A. Yes, sir.

Q. You don't think that over 1,000 people who voted for the A. F. of L. on June 8th are disloyal, do you?

A. I don't say that.
Q. Do you say they are or are not?
A. I don't say they are disloyal.
Q. You say they are loyal?
A. I don't say they are disloyal?
Q. But you won't say whether or not they are loyal?

Mr. Reed: Oh, now, this is arguing with the witness: I object to it.

Mr. Kleeb: Well, the witness has rather evaded the question, I think.

By Mr. Kleeb:

Q. Mr. McDonald spoke at the May 11th meeting, did he not?
A. Yes, sir.
Q. By the way, did you assist him in preparing these speeches, or did he prepare his own speeches?
[fol. 940] A. I never assisted anyone in preparing their speeches.
Q. You never assisted anyone?
A. In preparing their speech, no, sir.
Q. And then you had another public meeting at the Carnegie Hall, May, was it the 20th?
A. Public meeting?
Q. Yes.
A. Yes; not public meeting; it was a meeting for your members only, I believe.
Q. That was the 20th of May?
A. 21st.
Q. 21st of May?
A. Yes, sir.
Q. At the first meeting at the Carnegie Hall anybody could attend who wished?
A. How is that?
Q. At the first meeting at the Carnegie Hall anyone could attend who wished to attend?
A. Yes, sir.
Q. You had little green admission slips didn't you?
A. Yes, sir.
Q. It said, "Admit One"?
A. Yes, sir.
Q. And at the May 21st meeting a man or girl had to show what to get in?

A. One of our yellow membership cards.

Q. So that between May 6th and May 21st you had printed these yellow membership cards, one of which is an exhibit, did you not?

A. Yes, sir.

Q. They were given to whom? Who got those cards?

A. I got those cards.

Q. No, I mean what employees got them; did you give membership cards, too?

A. Why, all employees that signed our application blanks and was willing to take and pay 50 cents for their first quarter or a dollar for the half year or $2 for the entire year, whatever they thought that might be available.

Q. But no membership cards were given to anyone who would not pay any dues?

A. Not to my knowledge.

Q. It might have been done and you didn't know about it?

[fol. 941] A. Yes, sir.

Q. Between May 6th and May 21st the only association meeting you had, the only meeting you had, was that public meeting on May 11th, was it not?

A. You mean public meeting?

Q. Any kind.

A. No, sir.

Q. You had other meetings?

A. Between representators, yes, sir.

Q. What do you mean by that?

A. Well, certain groups that we had selected that night at the May 6th meeting.

Q. May 6th meeting?

A. May 6th meeting, yes, sir. We were given the right at that meeting for to formulate and to draw up a set of constitution and by-laws.

Q. Who was given that right?

A. The group that was there instructed me, the chairman of that meeting, for to take and do so.

And between the five originators of this association and Mr. McDonald, after the May 6th meeting, we started to work on our constitution and by-laws.

Q. So that there were meetings, they were the meetings you had between May 6th and May 21st?

A. We had various meetings between that.

Q. This group, in preparing the constitution and by-laws.

A. Yes, sir.

Q. But you did have the one public meeting on May 11th?
A. May 11th, yes, sir.
Q. And this group decided to have membership cards printed, did it not?
A. At this——
Q. After the May 6th meeting?
A. After the May 6th meeting, yes, sir.
Q. Where did you have those printed?
A. At Fischer & Faeth, 2100 Penn Avenue; I think it's 2100 Penn Avenue, if I ain't mistaken.
Q. Did you draw up the form or did McDonald?
A. I was probably the instigator of drawing up the form.
Q. And you five prepared it and paid the bill?
A. Yes, sir.
Q. How much was that?
A. 9.75.
[fol. 942] Q. When were those cards printed? That is, when did you have them available with reference to the May 6th meeting? A day after, two days, a week, before the May 11th meeting?
A. I think it was possibly a few days after, something similar to that.
Q. A few days after?
A. Yes, after the May 6th meeting.
Q. And then, immediately, did the process of distributing them go on?
A. After we had them signed by the treasurer. He took them home and signed a certain number of them, by the treasurer, and then we had the five members, originators, of this organization, pass them out, and had them signed by the individual theirself with their own signature on there.
Q. How many did he sign? Do you know?
A. The treasurer?
Q. Yes.
A. He signed everyone that was ever issued.
Q. I know that, but, at the very beginning, he had to sign a great number of them, didn't he?
A. Oh, yes, he had to sign a great number of them, for the simple reason, why, we had, at the present time, up until our May 6th meeting, approximately about 650 applications already in.

There was, however, enough there that the treasurer had to sign at least that many cards.

Q. Yes. And it was that card which had to be shown at the door of the Carnegie Hall May 21st?

A. May the 21st.

Q. To get in?

A. Yes, sir.

Q. How many would you say attended the May 21st meeting?

A. Well, I am safe in saying that there was possibly in the neighborhood of, oh, probably 700, maybe a little more.

Q. What plan did you adopt to get these cards to the individual employees and signed by them, each of them?

A. Signed by each of them?

Q. Yes.

A. During their lunch period time and going to and from work.

Q. Yes.

[fol. 943] A. That was the method that I instructed.

Q. Instructed whom?

A. The treasurer, to see after he has signed these cards, that he would distribute these out to these various people that I had designated, the five of us, after he had signed them, and they were instructed to see that the people signed theirselves on the stub either during lunch period time or going to and from work.

Q. And was the treasurer to take care of all that? Was the treasurer to see that all of these cards were signed?

A. Yes, sir.

Q. Do you know how he accomplished that? What he did?

A. Well, he done the biggest part of his work, I presume, at home in the evening.

Q. Oh, no. How did he go about getting 700 people to sign these cards?

A. Why, he didn't actually do it himself. The five of us in conjunction with a lot of these other people, the five selected these other people in order to get signatures on this petition, and they helped out.

Q. So that the treasurer and you five men, Ubrey, and the rest of you, and these people that had been originally selected to get signatures on the petitions, were given a batch of these cards to get the signatures of the employees; is that right?

A. Sure.

Q. That is how they were obtained?

A. Yes.

Q. That was done about between May 10th to May 21st?

A. Well, it is possible it might have been a day or two before May 10th, because right after our May 10th meeting we got busy and got these here membership cards.

Q. You mentioned a constitution and by-laws. You had none up to the May 6th meeting? You had no constitution or by-laws up to the May 6th meeting?

A. No.

Q. And I believe you stated that you decided, you in conjunction with McDonald, to draft a constitution and a set of by-laws?

A. Yes, sir.

Q. That was done, wasn't it?

A. Yes, sir.

Q. And when were they prepared? When were they [fol. 944] ready and adopted?

A. They were adopted at the May 21st meeting.

Q. And it was between May 6th and May 21st that you and McDonald, your attorney, prepared this constitution?

A. Not me and McDonald.

Q. Who?

A. The original five members, the instigator was myself, in drafting up this organization, and Mr. McDonald.

Q. I hand you this sheaf of papers, consisting of 12 typewritten sheets. Isn't that your constitution and by-laws?

A. That is what I sent you, yes, sir.

Q. Well, I asked you to send it to me.

A. Yes, sir.

Q. The last sheet says, "Plan of Division". That is part of the constitution and by-laws, isn't it?

A. Yes, sir.

Mr. Kleeb: I would like to offer it in evidence.

Mr. Reed: That is objected to, if the Court please. This is not proper cross examination. This organization isn't a party to this proceeding. It isn't on trial here. I haven't objected to these questions, but it is just cluttering the record with things that are immaterial. I don't like to see the record encumbered by this set of by-laws.

Mr. Kleeb: Well, if the Trial Examiner please, I think the history of this organization and how it began and who was a party to its formation, and who was a party to the creation of this constitution and by-laws, its constitution and by-laws, is material.

Trial Examiner Walsh: Objection overruled. It may be admitted in evidence.

(Thereupon the document above referred to was marked as Board's Exhibit 33 for identification and received in evidence.)

By Mr. Kleeb:

Q. Under your plan, you have what you call a representator, isn't that what you call him, a representator?

A. Yes.

Q. For certain departments according to your by-laws; is that right?

A. Yes, sir; certain departments, that is formed into a [fol. 945] division.

Q. Yes.

A. Yes, sir.

Q. You have 15 divisions?

A. Yes, sir.

Q. In the factory. And this representator is one for each of these divisions?

A. One for each division, yes, sir.

Q. And you have your officers, and then you have three directors?

A. Yes, sir.

Q. You are president?

A. Yes, sir.

Q. Edward Kranz is vice-president?

A. Yes, sir.

Q. William Sipple is secretary?

A. Yes, sir.

Q. And William Mohl?

A. Treasurer.

Q. Treasurer?

A. Yes, sir.

Q. John Ubrey, William Ubrey, and Frank Kirschner are the three directors?

A. Yes, sir.

Q. You testified that you during the strike meeting with the management, you were present on numerous occasions?

A. Yes, sir.

Q. You also testified that prior to the strike you had presented the management with the fact that you represented a majority of the employees?

A. We petitioned the management for recognition, not presenting the fact that we—we presented to the management that we represented the majority of the employees, but did not have the evidence at that meeting.

Q. You asked for recognition?

A. Yes, sir.

Q. When was that? The strike was May 24th, the night of May 24th; that was a Monday. Now, with reference to that?

A. Yes, sir.

Q. When was that?

A. Our first meeting with the management was on April 30th, 1937.

Q. At that time you did not represent a majority?

A. We at that time represented approximately about 650 employees.

[fol. 946] Q. According to these petitions?

A. Yes, sir.

Q. And when again did you talk to the management?

A. On May 24th, when we at that time had 1383 signatures.

Q. Whom did you meet on April 30th?

A. Mr. Riley.

Q. Is that when you asked for recognition?

A. Sir?

Q. Is that when you asked for recognition?

A. Yes, sir.

Q. What did Mr. Riley say at that time?

A. He told us that we would have to take and produce the evidence and show them that we did actually represent the majority.

Q. And you didn't have your petitions with you at that time?

A. No, sir.

Q. And you didn't again meet with the company from April 30th until May 24th?

A. No, sir. We continued getting these petitions filled out by the employees, due to the fact that we had those two open meetings in between that time, and we had a general meeting on May 21st, when we adopted our constitution and by-laws.

Q. At the time you asked for recognition from Mr. Riley on April 30th, you had no constitution and by-laws, did you?

A. No, sir.

Q. On May 24th, you say you talked with Mr. Riley. What time of the day was it, in the afternoon?

A. Yes, sir.

Q. Did you know that the A. F. of L. local union involved had been to see Mr. Riley that same day before you?

A. No, sir.

Q. What was said by Mr. Riley that afternoon in the meeting of May 24th?

A. If I recall correctly, Mr. Riley told us that we still didn't produce the evidence showing that we represent the majority of the employees of the H. J. Heinz Company and, therefore, until such a time we do produce that evidence, they will not recognize us as any collective bargaining group.

Q. However, between April 30th and May 24th, you, ac-
[fol. 947] cording to your own statement, claimed at all times to have had a majority of signatures on petitions, didn't you?

A. Say that again.

Q. I say, didn't you from April 30th up to May 24th always claim that you had a majority because of the signatures that you had on the petitions?

A. Yes, sir.

Q. Yet between April 30th and May 24th, you never made any effort to show or prove your majority to Mr. Riley; did you?

A. We realized that the plant took in more than 650 employees; we realized that it took in more than 1000 employees; therefore, we made every effort that we possibly could to be sure that we did have the evidence before we produced it.

Q. You weren't sure?

A. Not until we took and increased it from 650 to 1383.

Q. Yes, sir. You didn't on May 24th have the petitions with you, did you?

A. At the meeting?

Q. With Mr. Riley.

A. No, sir.

Q. Who had these petitions in their possession all of this time?

A. Who had them?

Q. Yes.

A. I had them.

Q. You had them?

A. Yes, sir.

Q. Some of these people turned them back to these five men including yourself, and they all in turn turned them over to you?

A. Yes, sir.

Q. And you kept them together?

A. Yes, sir.

Q. Some petitions had a lot of names on and some had a few names on?

A. Yes, sir.

Q. Now, during the strike, getting back to what I had asked you previously, you testified that you met with the management during the strike, and I think you said you had four meetings, continuous meetings, so to speak, over a period of 60 hours?

A. Possibly.

Q. Well, tell us, please, exactly the date or days that you [fol. 948] met with *with* Mr. Riley?

A. Well, if I recall correctly I received a telephone call at my home about possibly at 11 o'clock or else probably 11:30, on Friday, May 28th, if I ain't mistaken; and I happened to not be home at the time, but I left word where I was going, and my daughter and them come after me and notified me what they were after me for, and I says, "All right."

I immediately went to the place where I was supposed to go, and our legal adviser, and Mr. Beck and myself were the only ones that was available due to the fact that it was a late hour.

Q. What was that date?

A. On May 28th.

Q. Yes.

A. I believe that was on a Friday. It was on a Friday, and I am sure that May 28th was on a Friday of that particular week.

Q. And you met with Mr. Riley?

A. Mr. Riley, yes, sir.

Q. And what were the discussions with him?

A. Due to the fact that the evidence that they have requested showed that at a previous meeting of theirs with us that we—that they could not recognize us as the collective bargaining group until such time that we would produce the evidence showing that we did have the majority of employees of the H. J. Heinz Company, that evidence we pro-

duced showing that we did represent the majority, 1383 people; and due to that evidence, they recognized us as the collective bargaining group of the Heinz Plant.

Q. Did you have your petitions with you at that time?

A. They were in the possession of them for evidence so that we did have that as a majority.

Q. You gave those petitions to whom?

A. I had to turn them over to the management at their request in order to show that we did represent the majority.

Q. When did you do that?

A. On the day of the 27th.

Q. What time of day?

A. Oh, I couldn't say just what time of the day it was.

Q. Whom did you give it to? Whom did you give the petitions to? What person?

[fol. 949] A. They were turned over to Mr. Riley.

Q. You personally turned them over to Mr. Riley?

A. Yes, sir.

Q. What did he say he was going to do with them?

A. They had to count them, I presume, to find out and prove to their satisfaction we did have that many signatures.

Q. Did he say what he was going to do with them?

A. Sir?

Q. Did he say what he was going to do?

A. Count them and find out.

Q. He said he was going to count the names on the petitions to find out?

A. Possibly he did, I don't know.

Q. Did he say anything about what he was going to do?

A. No, because we had to stay and make out a sworn affidavit that we had that many.

Q. And that sworn affidavit was given to Mr. Riley along with the petitions?

A. I presume it was.

Q. Well, didn't you give it to him?

A. The sworn affidavits?

Q. Yes.

A. No, I didn't give the sworn affidavits.

Q. Who made the affidavits?

A. We had our notary public.

Q. I mean, did you make the affidavit or the five of you or who?

A. 16 of us signed those affidavits.

Q. And you say you presume they were also given to Mr. Riley? What happened to them? Don't you know?

A. What, the affidavits?

Q. Yes.

A. I don't know what happened to the affidavits, but the petitions were given back to me.

Q. Was the management present when these affidavits were taken?

A. No, sir.

Q. Who took the affidavits? I mean, that is, who took them into their possession? McDonald?

A. McDonald. He had the affidavits.

Q. You don't know what he did with them?

A. I seen them. He had turned them over to the manage-
[fol. 950] ment.

Q. But you don't know what happened to them?

A. I couldn't tell you.

Q. You have never seen them since?

A. Not the original——

Q. But you personally did turn over the petitions to Riley on May 27th?

A. Possibly that date, yes, sir, to show them we had the evidence.

Q. Who suggested affidavits.

A. How is that?

Q. Who suggested taking affidavits?

A. Why, our legal adviser suggested that it would be a legal policy for to make out an affidavit we do actually represent that many people.

Q. Are you certain that Mr. Riley or someone from the company didn't suggest that affidavits be taken?

A. No, sir.

Q. You don't know whether they did or not? You don't know whether or not someone did suggest that to Mr. McDonald; do you?

A. Oh, I couldn't say whether anybody did or not, but as a legal adviser, he ought to know.

Q. Yes. But you, as president of the association, don't know what happened to the originals of those affidavits; is that right?

A. The original affidavits?

Q. Yes.

A. No, sir.

Q. And you don't know what the company did with the petitions and signatures, whether they counted them or just looked at them or just counted the number of petitions, or what they did with them; do you?

A. No, sir.

Q. Now, you say you gave them to Mr. Riley on the 27th. Where were you when you gave them to him?

A. Right down in front of the plant.

Q. Out in the street?

A. Yes, sir.

Q. Was he out in the street, too?

A. I presume he was, if I was out on the street.

Q. Yes. The next day you and Mr. Beck and Mr. McDonald met with Mr. Riley about getting recognition, didn't you?

[fol. 951] A. Yes, sir.

Q. And who is Mr. Beck? Is he one of your representators?

A. Yes, sir.

Q. Where did you meet Mr. Riley on this occasion?

A. In the William Penn Hotel.

Q. How was that meeting arranged at the William Penn Hotel?

A. Possibly through Mr. McDonald because Mr. McDonald was the one that notified me, our legal adviser.

Q. To appear at the William Penn Hotel?

A. Yes, sir.

Q. Mr. Riley had a room down there, didn't he?

A. I don't know whether he had one or not, but that is where we appeared.

Q. The association didn't have a room; did it?

A. No, sir.

Q. Was anybody else of the company there besides Mr. Riley?

A. I believe Mr. Shinabarger was there, if I ain't mistaken.

Q. What time of the night was this?

A. Well, it is possible when we got in to meet them, that it was probably around midnight.

Q. And when did you hear from Mr. McDonald to report to the Wm. Penn Hotel?

A. Well, my daughter and them come after me at a place where I was, at an affair that evening and told me that Mr. McDonald called up the nome and says that I should meet him there, and that was around probably between 11 and 11:30 that evening.

Q. That McDonald called?

A. When they notified me. Now, what time McDonald called my home, I couldn't say, because they had about five miles drive from where I lived to where I was at, and then we got back into town.

Q. They came immediately for you after they got the call?

A. Yes, sir.

Q. And did you learn that Beck had been notified as you had to appear?

A. Yes, sir.

Q. You say the reason that only you and Beck were there was because of the late hour and McDonald couldn't reach others?

A. That is possible.

[fol. 952] Q. Was any explanation given for the fact that only you and Beck were present?

A. The only explanation that I can recall of, some of the members asked how it come that they got in touch with us, and through telephone, and so forth, and that is the only explanation that I ever answered and was ever asked.

Q. What explanation was given, if any, why this meeting was held at midnight or 11 o'clock at night at the Wm. Penn Hotel?

A. What explanation was given?

Q. Yes.

A. For the simple reason why, I believe, if you are trying to settle any kind of dispute, regardless to what time of the hour it may be or anything else, if you are a party that is interested in it, why, you are willing to be there at most any time when you are called.

Q. That explanation was given, was it?

A. Yes, sir.

Q. Well, isn't it a fact that this same time, that is, during this period after the strike, up until this time you yourself had been meeting with the Mayor of the city of Pittsburgh along with representatives of the A. F. of L. local for the purpose of bringing about a settlement of this with satisfaction to all parties concerned?

A. I can't recall of ever meeting with the Mayor of the city of Pittsburgh with any representatives of the A. F. of L.

Q. I don't mean—I didn't mean it just that way. But you had personally conferred with the Mayor of the city of Pittsburgh, hadn't you?.

A. In your presence?

Q. Yes.

A. Yes, sir.

Q. And you knew that the A. F. of L. representatives were conferring with the Mayor, didn't you?

A. That was the understanding that the Mayor gave you and me at that meeting that day.

Q. Yes. Now, I didn't mean to create the impression nor try to have you say that you met together.

A. O. k. That is all right.

Q. But you were having dealings with the Mayor of the city of Pittsburgh at the time about the strike?

A. Yes, sir.

Q. And, among other things, the idea of an election among the employees was being discussed, but had not been set-
[fol. 953] tled?

A. Yes, sir.

Q. And you knew at the time, did you not, that the A. F. of L. local also claimed a majority of the employees?

A. That is possible.

Q. Well, you knew that they were claiming that, didn't you?

A. They say they had the majority, sure.

Q. You knew that they said that?

A. Why, sure, I knew it.

Q. Yes. And you knew, Mr. Bennett, didn't you, that the reason that the A. F. of L. local refused to consent at the beginning with your association being on the ballot was because in the A. F. of L. local's opinion, you were an illegal organization, a company union, in violation of the Wagner Act? That was the reason they gave?

A. That is the reason—that was their opinion.

Q. Yes.

A. Yes.

Q. But that is the reason they gave for not wanting to consent to having your name on the ballot? Right?

A. I presume that is their reason.

Q. You knew that was their reason?

A. They claimed that.

Q. They claimed that?

A. Sure.

Q. And weren't you informed, or didn't you know at that time that about that time, in May or May 27th before the strike terminated, that the A. F. of L. union had filed a charge with the National Labor Relations Board alleging that the Heinz Company—that the association existed, rather, in violation of the Wagner Act?

A. I did know that, you say?

Q. You heard that?

A. I heard that from Mr. Dunbar.

Q. Yes. When you met this night of May 28th in the Wm. Penn Hotel with Mr. Riley and Mr. Shinabarger, Mr. Beck and Mr. McDonald, tell us what Mr. Riley or Mr. Shinabarger said and what you said? What took place at that meeting, and how long did it last?

A. Oh, it didn't last awfully long, because it was a late hour in the night, and we figured that it was no use of two or three people going into many details about anything [fol. 954] other than being advised that they recognized us, due to the fact that we had produced the evidence showing that we did have the majority signatures of the employees of the H. J. Heinz Company, and they recognized us as the collective bargaining group of the Heinz Employees.

Q. And that was, I think you said, about midnight of May the 28th?

A. Well, possibly it was around that time when we went into the meeting, but it might have been a little later when they made that announcement.

Q. Yes. Did they tell you how they came to that conclusion?

A. Well, our evidence, no doubt, give them that real conclusion, or they thought.

Q. Well, I mean, did Mr. Riley say, did he specifically say, or did Mr. Shinabarger specifically say, why they had decided to recognize the association?

A. Because we produced the evidence that we do represent the majority of the employees.

Q. That evidence was the petitions with the signatures of the employees?

A. The affidavit and these petitions that had been signed by these employees.

Q. I thought you said you didn't know anything about the affidavits we had.

A. We had signed these affidavits, sure.

Q. But you don't know whether the company had them or not?

A. I didn't know that, no.

Q. That was a Friday night, wasn't it?

A. Yes, sir. Was that the 28th?

Q. 28th, yes.

A. Yes, sir.

Q. In the morning paper, Pittsburgh Post-Gazette, Saturday morning, May 29th, that full-page ad appears, Board's exhibit 14?

A. Yes, sir.

Q. Is that right?

A. That's the copy of it.

Q. You read that?

A. Yes, sir; that's the copy of it.

Q. This ad, among other things, says that they have checked the petition presented to us and signed by 1,383 of our employees, and it says, "We are convinced that the Heinz Employees Association is the union which is chosen [fol. 955] by more than a majority," and so forth.

"We have agreed to recognize it as the collective bagaining agency for our employees"?

A. Yes, sir.

Q. Then it goes on to say, "We will not, however, make an agreement with any union for a closed shop," and then gives the reasons that they don't want to force anybody into any union.

Did Mr. Riley or Mr. Shinabarger say to you anything about an agreement but not a closed-shop agreement at that time, midnight, May 28th?

A. Well, probably they might have and they might not have. But there wasn't practically, to my knowledge, any particular items discussed at that meeting of an agreement because we weren't there for the purpose of discussing an agreement.

Q. No, I know that, but I am asking you if you recall or recollect that Mr. Riley or Mr. Shinabarger said anything about an agreement or about a closed-shop agreement.

A. Not that I recall.

Q. Can you recall anything being said about an agreement between your organization and the company?

A. There was no agreement, to my knowledge, discussed whatsoever at that particular conference.

Q. And you say you were there about five minutes, or a few minutes, 10 minutes, 15 minutes, to get this information from Mr. Riley, at the William Penn Hotel, the night of May 28th?

A. Well, possibly it might have been around that time or a little longer, because it was a late hour in the night, and we had been on the ground back and forth practically that entire week during that strike.

Q. Now, then, after this announcement in the Saturday morning newspaper, when did you first meet, your representatives first meet, with the company?

A. I believe it was possibly Saturday at noon, around noon-time, somewhere around there.

Q. The 29th——

A. It might have been a little before noon, but, anyhow, it was on Saturday.

Q. May 29th?

A. Yes, sir.

Q. And you met—Who met you, from the company?

A. You mean who met with the company?

Q. That is, who from the organization met, and who [fol. 956] from the company met?

A. Mr. Harry Zimmerman, Mr. Arthur Ramming, Mr. Bernard Rooney, Mr. William Sipple, Mr. Raymond L. McDonald, and myself.

Q. And from the company?

A. Mr. Riley and Mr. Shinabarger.

Q. And where was this meeting?

A. In the William Penn Hotel.

Q. They weren't association rooms, were they? The association didn't have any rooms in the William Penn Hotel?

A. Never have.

Q. How long did you confer that day?

A. Oh, possibly, from, I would say, up until late Saturday evening.

Q. Take time out to eat or just go straight through?

A. We went down and had a cup of coffee and went up and started calling one another names, the same as usual.

Q. And then you met again when?

A. On Sunday.

Q. That was the 30th of May?
A. Yes, sir.
Q. Where did you meet?
A. In the William Penn Hotel.
Q. And the same committee?
A. Yes, sir.
Q. And the same representatives from the company?
A. Yes, sir.
Q. And how long did you confer on that day?
A. Oh, we went to that for practically early Monday morning.
Q. When did you start on Sunday? In the early afternoon?
A. No, sir, in the morning; some time in the morning.
Q. Is that the—Then when again did you meet?
A. Early on Monday morning; on Decoration Day morning.
Q. The 31st?
A. Yes, sir.
Q. William Penn Hotel?
A. Yes, sir.
Q. Same representatives?
A. Yes, sir.
Q. And how long did you meet that day?
A. I believe we were going home at daylight the follow-
[fol. 957] ing morning.
Q. So you conferred all day?
A. Yes, sir, and all night, practically.
Q. And how did that meeting end?
A. In just what way?
Q. Did you reach any conclusion by that time?
A. As much as the understanding that we could come to, yes, sir.
Q. And what was agreed upon with reference to that understanding?
A. Why, in regards to an increase in wages, the employees being paid for time lost due to interruptions, breakdowns, or similar to that. The employees being called out for any particular time and no work available for them. Procedure set up to handle grievances and complaints and so forth, and various things along those lines.
Q. Mr. Bennett, you testified on direct examination at the time you went in to see the management before the strike

you had your demands set up, didn't you? You hadn't presented them, but you had them prepared, before the strike?

A. Yes; before the strike?

Q. Yes.

A. We had our—you mean the meeting of May 24th?

Q. Yes.

A. We presented no demands——

Q. I didn't say you presented them, but the organization had them up to present, if you were recognized?

A. If we were recognized?

Q. Yes.

A. No, we never had them drawn up to be presented if we were recognized.

Q. You had never agreed on any demands you were going to ask of the management up until you met with them after May the 29th?

A. Say that again.

Q. I will re-word it: Up until May the 29th, when the company said it would recognize the association, you had no demands prepared that you were going to present to the company?

A. Well, we had no demands really prepared. We had the thought in mind what we would prepare.

Q. But had not prepared or had not formulated in final fashion?

A. Well, they were formulated but I wouldn't say they [fol. 958] were prepared until we went over them and decided they would be the plans we presented.

Q. And you asked for a 10-percent increase?

A. 20 percent.

Q. And got 10 percent?

A. We got 10.

Q. You asked for a 40-hour week and an 8-hour day?

A. Yes.

Q. You got that?

A. Yes.

Q. You asked for any employee being called out that he be given four hours' pay even though he doesn't work?

A. They doesn't work, you mean?

Q. He is called to work and there is no work for him, he gets four hours because he is called out; did you ask for that?

A. Now, let me see. I believe there was something similar to that.

Q. You got that?

A. That's what we got out of it, yes.

Q. Yes. The divisional breakdown of the plant, the 15 divisions you had in your by-laws, that was accepted by the company, too, wasn't it?

A. Explain that again.

Q. In your by-laws you have a divisional break-down; the plant is divided into 15 divisions?

A. Yes, sir.

Q. That breakdown, as you had it broken down in your by-laws, was accepted by the company?

A. You mean that plan of division?

Q. Yes.

A. Accepted by the management?

Q. Yes.

A. I don't know that it was. That was our contention, of drawing up a constitution and by-laws, and I believe any organization has got the right to specify how they want their division or their members of their organization taken care of and regardless to whether the management would have accepted or wouldn't have accepted or whether they did accept it or whether they did not accept it, that's our provisions and our method of handling it.

Q. Did the management accept that method or not?

A. I can't say whether the management did or not. I don't believe that it would be anything in regards to making an agreement with the management, whether they wanted to accept that proposition or not.

[fol. 959] Q. Did you, that night, May the 31st, draft any kind of a document and agree on the language of any kind of a document which was to represent what you had got from the management?

A. In what way do you mean?

Q. Well, any form of a contract or a letter or a statement or any such thing as that.

A. Did we make up any contract or any statement?

Q. That's right.

A. That had been agreed upon between the collective bargaining committee and the management of the H. J. Heinz Company?

Q. Between you people who were present in the William Penn Hotel.

A. Other than what we had agreed to.

Q. Did you, with the Heinz Company, with Riley and Shinabarger, sit down and write out a contract or write out a bulletin or write out a letter and agree on the language?

A. We had our demands, what we were asking for, and we would go into the management at various times at this here conferences and squabble back and forth at each other until we did come to such agreement at any particular item that we had asked for or demanded.

Then, after we concluded on that there, it was agreed that that would be the basis of that particular demand or particular item that we were after.

Q. I understand that. I don't think you understand what I am getting at.

A. Probably I don't.

Q. Was it agreed between the groups at the William Penn Hotel that these understandings you had reached were to be put in writing, or was there any agreement about that?

A. Yes, sir.

Q. What was it?

A. It was agreed that these here would be posted on the bulletin boards and put in writing just as they were put out.

Q. And who was to prepare that writing that was to be posted?

A. We had the opportunity for to do any preparing that we seen fit because we believed that we was the party involved.

Q. And did you prepare something?

A. Part of it. It was our understanding at these meetings that we agreed to go along and agree with these items that we were scrapping for.

[fol. 960] Q. I understand that. But, Mr. Bennett, you know what I mean.

A. Sure.

Q. Did you have any part in the wording or the language of the letter which was posted on June first of this year on the bulletin board?

A. Personally, yes, because we were the parties involved.

Q. Was that letter, the wording of it, the language of it, the form of it, drafted and agreed upon at the William Penn Hotel the night of May 31st?

A. The wording of that letter?

Q. Yes.

A. As the agreement is there?

Q. Yes.

A. That was agreed upon between the collective-bargaining group and the official legal adviser of our organization and the representatives of the management.

Q. When?

A. On the day that we finished up our agreement.

Q. When?

A. That was on May 31st, 1937.

Q. And that document was in writing before you and before you left your agreed that that's the wording of it and the form of it was to go on the bulletin board; right?

A. Yes, sir.

Trial Examiner Walsh: Recess at this time until 1:30.

(Whereupon a recess was taken until 1:30 o'clock p. m.)

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 o'clock p. m.)

Trial Examiner Walsh: The hearings will come to order.

I. C. Bennett resumed the stand and testified as follows:

Further Cross-examination.

By Mr. Kleeb:

Q. Mr. Bennett, at the close of this morning's session, we were discussing the last meeting, I believe, at the Wm. Penn Hotel on May 31st?

A. Yes, sir.

[fol. 961] Q. I would like to refer you to Board's Exhibit 15. That is the letter sent all the employees by the company embodying the things your grievance committee discussed with Mr. Riley and Mr. Shinabarger, those days, the 29th, 30th, and 31st of May; is it not?

A. This here one (indicating)?

Q. No, not that particular one, but that is a copy of the letter?

A. Yes, sir.

Q. Which was sent all employees?

A. Yes, sir.

Q. Did you receive one through the mail?

A. Yes, sir.

Q. Do you recall when you received yours; that is, did you get it on Tuesday, the 1st of June, or did you get it on Wednesday, the 2nd of June?

A. Well, now, that is——

Q. If you recollect?

A. It is possible that it might have been—might have been the 2nd of June or probably the 3rd or 4th, for the simple reason why I live in the Royal district.

Q. I see. And delayed the mail, perhaps?

A. Yes, sir.

Q. But you did get it through the regular postal channels?

A. Yes, sir.

Q. I call your attention to the first paragraph of that letter. Was the wording of that agreed upon by the committee and by Mr. Riley and Mr. Shinabarger the night of the 31st at the Wm. Penn Hotel, or was anything like that discussed?

A. Yes, sir.

Q. Was that paragraph written out and agreed upon that night?

A. Yes, sir.

Q. And was it agreed that this divisional breakdown of 15 divisions should go in the letter?

A. Yes, just as it is there; yes, sir.

Q. In other words, this letter, Board's Exhibit 15, was written out as it is here? And agreed upon?

A. This here as it is here?

Q. Yes, the whole thing?

A. Yes, sir.

Q. Did the company make any objection to putting the name "Heinz Employees Association" in the first paragraph?

A. If I recall correctly, they did.

[fol. 962] Q. But you got it in, didn't you?

A. How is that?

Q. You got it in, didn't you?

A. With the sup-ort of our evidence, there was a reason to believe that we did get it in.

Q. No, no. I mean there was no objection, was there, to stating that the Heinz Employees Association was recognized as the sole bargaining agency? The company didn't raise any objection to putting that in a letter, did it?

A. You mean in sending this out to the employees?

Q. Yes.

A. The question was brought up as to why we wanted it in there, and we says, "Well, we showed and produced the evidence that we represent 1383 employees of the firm; therefore, our evidence convinces you people that we are actually in the majority. We don't see any reason why our name shouldn't be mentioned there."

Q. So——

A. It was mentioned there.

Q. With that assurance from you, it was mentioned, was it?

A. Yes, sir.

Q. Did you agree that the p. s. should go on there, the postscript, that pay checks will be distributed Wednesday, June 2nd, 1937, at 3 p. m. in the Sarah Heinz house?

A. Yes, sir.

Q. You agreed to that, too?

A. Yes, sir.

Q. All right. That was the subject of bargaining, was it?

A. It was in one sense of the word, yes, sir, because we felt that the employees were entitled to their pay and there should be some provision made that they get their pay.

Q. Yes. What do you call this thing? What term do you give this letter that was mailed out by the company? What do you call it?

A. Why,——

Q. You, personally. What do you call it?

A. I would call it a memorandum of our understanding, or something along those lines, that these are the terms that we had agreed upon between the representators or the collective bargaining committee that had been chosen through the representatives of the organization and management of H. J. Heinz Company.

[fol. 963] Q. You wouldn't call this an agreement, would you, that letter?

A. Well, I don't know.

Q. Or do you?

A. I don't know why you wouldn't call it.

Q. Well, do you call it an agreement or what do you call it?

A. Well, the terms that is in there, I would say that it is an agreement.

Q. That letter of June 1st is an agreement between you and the company?

A. Yes, sir.

Q. What kind of an agreement would you call it?

A. Well, I would call it an agreement that it has been arrived at with the conclusion of both parties consented and have come to those understandings, the understanding that has been mentioned there.

Q. And then at that time, it was your understanding that the association had a written agreement with the company? Right?

A. We had a written agreement with the company?

Q. Yes. Is that——

A. In what way do you mean?

Q. Well, this. This letter of June 1st, did you consider that a written agreement between the association and the company?

A. I would consider that an agreement between the company and the employees association.

Q. Yes.

A. In other words, whether you would call it a written agreement or not, I would say that it was agreed to, which is an agreement between those parties concerned.

Q. Well, this June 1st letter is in writing, isn't it?

A. Yes, sir.

Q. And you say that is the agreement, don't you?

A. That is the agreement that we had arrived to.

Q. And you consider that June 1st, 1937 letter as a written agreement between the association and the company?

A. If you want to term it that way. I would say yes.

Q. I don't. I am asking you.

A. That is what we had agreed on.

Q. Do you term it a written agreement between you and the company?

A. Personally, I would say yes. We had agreed on those [fol. 964] basis.

Q. This card I hand you was sent by your association to all the employees to sign and return if they saw fit?

A. It was what?

Q. Sent by your association to the employees?

A. You are wrong.

Q. What was done with —? Identify the card, please.
A. Yes, sir, I identify that card.
Q. Please do so.
A. Yes, sir, that belongs to our association.
Q. All right. What is it?
A. That card? You want me to read it out loud?
Q. What was done with the card?
A. That card was sent out with committees from our association to solicit the employees of H. J. Heinz asking them whether they were willing and understood the agreement that had been negotiated between us and the management as it reads here.
Q. Yes.
A. To see whether they understood that and if they were satisfied to go back to work.
Q. Yes.
A. Under that agreement. We had committees go to them.
Q. During the strike?
A. Not only members of our organization, but also anybody and visit what they could and have them sign. That was not meant——
Q. It was during the strike?
A. During the strike?
Q. Yes.
A. Yes, sir.
Q. And, of course——

Mr. Bostwick: Will you identify that?
Mr. Kleeb: I will offer it. I will offer this card in evidence.

Have you seen this? (Paper writing handed to Mr. Reed.)

(Thereupon the document above referred to was marked as Board's Exhibit 34 for identification.)

Mr. Reed: No objection.

[fol. 965] Trial Examiner Walsh: It may be received.

(Thereupon the document above referred to was marked as Board Exhibit No. 34 and received in evidence.)

By Mr. Kleeb:

Q. Who was it that decided to draw up such a card and to distribute it as you have explained?

A. I think, Mr. Kleeb, if you recall the meeting that you were in presence with myself and Mayor Scully that the first suggestion of that there card was arrived at that meeting.

Q. Well, I don't recall it.

A. Well, it was. The first suggestion of such a card was arrived at that meeting; coming out of Mr. Scully's office.

Q. But at the time you were in Mr. Scully's office you had not reached any understanding with the H. J. Heinz Company?

A. No, sir.

Q. And this card is based on the understanding you reached June first?

A. No. Mr. Scully suggested that why not put a card out to the membership and get their opinion on whether they should continue this strike or whether they shouldn't.

Q. I know——

A. Now wait. We did not grasp at that opportunity, but we still held the thought in mind that after we had reached the agreement with the management that we followed part of Mayor Scully's suggestions in issuing this card.

Q. What I mean is this: This card refers to the agreement, doesn't it?

A. That card refers to the agreement, sure.

Q. Of June first?

A. Of June first, yes.

Q. This card says, "I am an employee of the Heinz Company. I have read the agreement,"——

A. Yes, sir.

Q. —"entered into between the company and the bargaining committee of the Heinz Employees Association."

A. Yes, sir.

Q. "I am satisfied with it. I am ready and willing to go to work immediately."

[fol. 966] A. Yes, sir.

Q. And it requests you return the card to headquarters at 1000 East Ohio Street.

A. East Ohio Street.

Q. And the phone number and the department is on there?

A. Yes.

Q. Who drafted that card?

A. That was drafted between our legal adviser and myself.

Q. And you considered that there was an agreement en-

tered into in writing between the company and the association, because you said so, didn't you?

A. Why shouldn't I, because we were recognized as the collective-bargaining group.

Q. And you said so on the card?

A. It's there, isn't it?

Q. Yes. And through committees these cards were handed out to people on the picket line and at their homes and places of that sort?

A. I am safe in saying Yes.

Mr. Kleeb: For a moment, if the Trial Examiner please, reference has previously been made to a printed petition as distinguished from Board's exhibit 7, which is a typewritten petition.

I would like to ask this witness this question:

By Mr. Kleeb:

Q. Is that the printed petition both of us have made reference to in previous testimony of yours, that you had printed prior to the May 6th meeting?

A. This is a copy of the same thing.

Q. Yes.

Mr. Kleeb: I would like to offer it in evidence as Board's exhibit No. 35.

Mr. Reed: No objection.

Trial Examiner Walsh: It may be received.

(Thereupon the document above referred to was marked as Board's Exhibit No. 35 and received in evidence.)

By Mr. Kleeb:

Q. You were the signatory to the memorandum of understanding of June 4th?

A. Yes, sir.

Q. Were you not?

A. Yes, sir.

[fol. 967] An understanding which created a consent election and because of which a consent election was held; is that right?

A. Yes, sir.

Mr. Bostwick: What date?

Mr. Kleeb: June 4th; I believe I said that.

By Mr. Kleeb:

Q. You recall in that agreement, copy of which is in evidence, that the company agreed that whoever won the election would be recognized by it as the sole bargaining agency and within 10 days after the election the company would enter into negotiations with the winner for the purposes of negotiating an agreement. Do you recall that?

A. Yes, sir.

Q. What was your understanding of what was meant by that?

A. Just as it reads, that the canners and pickle workers organization, probably, receiving the majority of votes cast at the election of June 8th, and 10 days after June 8th the company would enter into negotiations with the Canning and Pickle Workers organization.

Q. To negotiate an agreement?

A. Yes, sir.

Q. And if the association won, the same thing?

A. Probably the same thing would apply unless we would petition, no doubt we had the right to petition the management if we win the election, to petition the management, we would still continue going along with the agreement that had been reached prior to such election.

Q. Yes.

A. We had that right.

Q. You also recall at that time that a stipulation was signed by all parties reserving any rights that the Canning and Pickle Workers Local had, it mentioned, with reference to affidavits filed before the Labor Board. Do you recall that?

A. Yes, sir.

Q. Copy of that also is in evidence?

A. Yes, sir.

Q. You knew on June 4th, didn't you Mr. Bennett, that your association, the legality of it was questioned with reference to a charge that was filed with the Sixth Regional Labor Board against the Heinz Company by the Canning and Pickle Workers Union?

[fol. 968] A. I heard Mr. Dunbar making remarks about charges being presented, but what the charges were or who presented them, what individual party, I never heard that.

Q. But you previously admitted to me and I believe you

will admit now that you knew that your organization was being charged with being a company union. You knew that the A. F. of L. was charging that, didn't you?

A. And I heard there was charges made but what the charges were I never admitted to you or anybody else, what they were, and don't know what they are today.

Q. You don't know that the charges were filed by the Canning and Pickle Workers——

A. By the Canning and Pickle Workers, yes. I know they were filed, but what they were I could never tell you that.

Q. You did not know on June 4th that the charges involved the fact that the Heinz Company had a company union called the Heinz Employees Association?

A. Nobody told me that them was the charges.

Q. You never even heard anything about that, did you?

A. I heard there is charges but I didn't hear they were filed in that way. I have never seen anything in writing to that effect.

Q. You know that this hearing is based on those and other charges?

A. That's what you say it is.

Q. You still don't know what those charges are, is that it?

A. I have never seen any of those charges other than that hearsay. If you mean this one you have got, I have seen them at this present time, this you sent to me.

Q. Charges attached to the copy of the complaint?

A. Yes. I have seen that there, but up until that time I never seen any other charges. I had rumors that there were charges presented, but never seen anything until I received this stuff off of you on October 29th when that receipt was signed for registered mail.

Q. But you, up to then, had no knowledge of the fact that the Heinz Employees Association was being questioned as being a company union—Strike that.

[fol. 969] A. Other than——

Q. What?

A. Other than hearsay from the members of the A. F. of L., but as far as seeing anything about it why, I never had any knowledge.

Q. And do you deny knowing—Strike that. You stated, I believe, that you had 1393—or 1,383—signatures,——

A. 1,383.

Q. Signatures to these petitions, by May the 24th.
A. Yes, sir.
Q. Out of how many?
A. You mean how many what?
Q. How many possible signatures you could get?
A. You mean employees?
Q. Yes.
A. Oh, I would presume, I have an idea that they must have close to 2,000 people working there. I would imagine so.
Q. Yes, but you don't take them all into your organization, do you?
A. All the employees?
Q. Yes.
A. We are not permitted.
Q. Yes, by your constitution and by-laws?
A. Yes, sir.
Q. These headquarters that you have at 1000 East Ohio Street, you still meet there?
A. Yes, sir.
Q. Is that this church?
A. Church, yes, sir.
Q. Do you meet in the basement or in the church itself?
A. No, we don't meet in the basement nor we don't meet in the church.
Q. Where?
A. I presume they use the rooms for Sunday School, probably, entertainment affairs, social functions, and so forth. They are large enough to take quite a large gathering of people in.
Q. And do you have regular meeting days?
A. Not any particular regular meeting time. We might meet on the 4th or 5th of one month and maybe on the 10th or 12th of next month or maybe the 25th of the same month, or something similar to that.
[fol. 970] Q. But you have meetings twice a month?
A. Sometimes we have them twice a month and sometimes only once a month.
Q. And you have been having them regularly since the election?
A. Yes, sir.
Q. Up to the present time?
A. Yes, sir.

Q. Do you get this meeting place free of charge or do you pay rental?

A. We don't pay any rent other than outside of showing our good will. We take ahold of their gas bill and electric bill and we pay the janitor a few dollars, because, as a rule, the average group of people, whether they are men or women, today, they muss up a place with smoke and other stuff, and cigarette buttses, and the janitor cleans that up, and we pay the janitor a few dollars for doing it, and we take care of the gas and electric bill.

Q. There is no regular charge, however?

A. No, sir.

Q. How much does that hall run you a month? $5? $2?

A. No, it goes a little more than that, because their gas and their electric bill—oh, I presume, is in the neighborhood of about, anyways, from 7, probably $7. Sometimes it might be a little over 8, something around that there, and then we give the janitor—I don't believe that we have ever given him yet, less than $5, that I can recall of.

Q. Well, how much would you say, to date, those headquarters have cost you, approximately?

A. Let's see, now. Well,—Oh, I am safe in saying in the neighborhood of about, probably around $50 or maybe a little more, or it might be a little less.

Q. But about $50?

A. Yes. That's taking in conjunction with the gas and electric bill and the janitor, we give him a few dollars that way.

Q. About $50?

A. Something similar to that.

Q. And those arrangements for that place are made with the pastor of the church?

A. Well, sometimes they are and then again, if we figure we are going to have a meeting up there, if we don't just get in touch with the pastor we get in touch with the janitor, [fol. 971] and, if they are not having any particular affair on the night we want to have our meeting, then we can have the place, and then we notify our membership.

Q. By the way, who is the pastor of that church?

A. Reverend Harvey Cook, Harvey Cook.

Q. Tell me, how did it happen that the association adopted this church as headquarters for its meetings?

A. Well, we have in our association people that I know belongs to that church, and they felt that there would be

no ill feelings raised about us trying to meet there, and we felt that the closer that we could get to our place of employment for a meeting place, under the present conditions that existed between the time of the strike, the better we would be, and we, in turn, took the church over as our regular headquarters during the time of the strike and we have been going along there ever since, having our meetings there with our association from time to time, with the exceptions of four meetings that we have already had, in the Carnegie Library, since the time of the organization going on.

Q. That's the meeting of May 11th, May 21st and two other meetings?

A. May 11th, May the 21st, June the 7th and October 18th.

Q. Three of those four meetings were for members only?

A. Yes, sir.

Q. The first being for anybody?

A. An open discussion.

Q. Yes.

A. That's right.

Q. These meetings at the Carnegie Library are at the Carnegie Library Music Hall?

A. They call it the Carnegie Free Library, Northside.

Q. Yes. Is there any rental for that?

A. We had to pay it.

Q. What did they charge?

A. $25.

Q. Each time you used it?

A. Yes, sir.

Q. Were you active in the 57 Club for men?

A. No, sir.

Q. There has been evidence that the 57 Club activities [fol. 972] have been discontinued; Mr. Heinrich said something to that effect?

A. Yes, sir.

Q. Do you know whether or not the treasury of that club was turned over to the *the* Heinz Employees Association?

A. It was never, not, and don't nobody ever will tell you it was.

Q. I am asking you.

A. I say, don't let anybody ever tell you it was because they are lying when they tell you that.

Q. I am asking you if it was.

A. It was not.

Q. Has Mr. McDonald, your attorney, received any compensation for services rendered to this association?

A. Say that again?

Q. Has Mr. McDonald, your attorney, received any compensation from the association for services rendered to the association?

A. Yes, sir.

Q. How much has he received?

A. $250.

Q. To date?

A. To date.

Q. For the speeches and the constitution and by-laws and other general legal services?

A. Well, it was for his service rendered. He didn't specify whether it was for speeches or anything else. It was for services rendered.

Q. Just for general services rendered?

A. Yes.

Q. I believe you stated that according to your own constitution the membership dues are $2 a year?

A. Yes, sir.

Q. Per person?

A. Yes, sir.

Q. And I think under the terms of your constitution a couple of your officers received small pays for their work?

A. Yes, sir, two.

Q. Treasurer——

A. Two of the officers, secretary and the treasurer.

Q. Are they being paid?

A. No, sir, they have not been paid.

Q. Why is that?

[fol. 973] A. Because they don't specify in there as to what time they should be paid.

Q. So you haven't paid them?

A. No, that can be done by motion at any time at any meeting within the set period of time that they are an officer.

Q. Mr. Bennett, you apparently have some knowledge, I should say a good bit of knowledge, of labor unions in general from experience and reading and otherwise?

A. I have been in labor organizations before.

Q. And you have read a good deal about it, haven't you?

A. I think I have.

Q. Don't you realize, that so far as being able to bargain effectively, in the history of labor and labor unions, as you know it, cannot be done through these independent associations?

A. Who said it can't?

Q. I said, don't you agree that that is a fact?

A. Do you want me to agree with that?

Q. I say, do you or don't you agree with that?

A. Why can't it be done?

Q. I say, do you or don't you agree with that?

A. I say that it can be done.

Q. Tell us why, in your opinion, it can be done?

A. Why it can be done collectively?

Q. Yes.

A. For the simple reason why individual person that has the ability or the thought in mind of belonging to any organization, regardless as what kind it may be, he does not need to fear whether his employer, whether his neighbor or whoever it may be, he doesn't need to fear—care whether they know about it and whether they don't, and if the average worker today gets that thought into his mind or into her mind and goes along those lines, I think your labor situation in the country in general will be a whole lot better because, if I am correct, my interpretations of Section 7, or Article 7, rather, of the Relations Labor Act and also paragraph 5 of Article 2 of the Relations Labor Act, gives you the right to form whatever kind of an organization you see fit to form. It doesn't say that you have to belong to the A. F. of L. or the C. I. O. It doesn't say you have to belong to any kind of an organization and, therefore, it gives the [fol. 974] right to the people, it tells them plainly that they can have an organization of their own choosing and there is no reason why that the employees of any particular plant can't get as much as any labor organization that may be known nationally. The only thought that these national labor organizations have in mind, in my personal belief, is that they think because we are in the mills, factories, or mines, or whatever it may be, day after day; we don't get out throughout the country to find out what they may call information; the conditions in our plant and the conditions of another plant similar to that in a different state is alto-

gether different, that's true, and I believe that when you are forming an organization as an independent group, there is nobody at that particular plant can take and instruct you better on the conditions of that particular plant than you can yourself. You have worked in the plant for a certain number of years; you understand the conditions of it; you know what the employees are really after; you realize what they should be getting under their present method, and when you get an outsider to try to dictate to you as to what you should have and what you are going to get, it is two different things. And I believe that the method that I have always followed ever since my last previous experience in it has always been along those lines, that it can be done through independent organization on a better and on a cheaper basis instead of paying some high powered organizer or international for to travel back and forth over the country, and come in and tell you after you have fought your own grievances in that particular shop or plant through your local committee, and failed to get any adjustment, then these outside organizers or representators, come in and tell you, after they have handled it with the management—see? And they don't get for you what you have even been demanding from the management, they come back and tell you that you ought to be glad "We got for you what we did" and you accept it and go back to work under probably the same conditions as that you went out under.

Q. How much have you got in the treasury now?

Mr. Reed: This is objected to.

A. How is that?

Mr. Reed: This is objected to. It is no concern of this Examiner. After all, the organization isn't on trial. The organization isn't the defendant. If we had tried to inquire into the financial affairs of the American Federation of [fol. 975] Labor, it would have been refused and has been refused over and over again by the Labor Board. Now, I have no interest in this organization, but I don't see the propriety of this question.

Trial Examiner Walsh: Have you anything to say, Mr. Kleeb?

Mr. Kleeb: No.

Trial Examiner Walsh: The objection is sustained.

Mr. Kleeb: That is all.

Redirect examination.

By Mr. Reed:

Q. Mr. Kracik—I beg your pardon, sir. Mr. Bennett, I was going to ask you if you had any office in the union of the A. F. of L. to which you formerly belonged?

A. Why, yes, sir. I was president of the Allegheny local No. 527 on the International Brotherhood of Boiler Makers, Iron, Ship Builders and Helpers of America.

Q. How long a time were you president of it?

A. From 1918, in the fall of that year, up until October 31; 1924, when the lodge disbanded.

Q. You were still president, then, after you came to the Heinz Company?

A. Yes, sir.

Q. You said something about bills of Mr. McDonald and you paid him $250. Is that all he charged you?

A. No, that is what we have paid.

Q. Have his bills been more than that?

A. The bills is more than that, yes, sir.

Q. It isn't all paid?

A. No, sir.

Q. Now, in choosing the men that you had to circulate these petitions, I assume you chose them because you through contacts among the men knew of their ability to get members; is that right?

A. Yes, sir.

Q. Now, that was a decision that you five men made in the best interests of your organization?

A. Yes, sir.

Q. Did you ask Mr. Novak to become an organizer?

A. Did I ask Mr. Novak to become an organizer?

Q. Yes.

A. No, I did not.

Q. There is one question I neglected to ask you before. A man named Merrick testified that you would be absent from [fol. 976] your job for two or three hours at a time during working hours while you were working on this organizing of this association. Is that true?

A. No, sir.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 5 for identification.).

Q. I call your attention to a card which has been marked "Respondent's Exhibit No. 5," and ask you if you know what that is?

A. I have never seen that card before, but I have some recalling of them mentioning them about their dance being held on that particular night.

Q. Well, I didn't refer so much to that side of the card as the other.

A. No.

Q. Did you hear that song being sung during the strike?

A. Yes, sir.

Q. By whom?

A. Why, the pickets that was in the picket line there on various occasions.

Q. Part of that, I believe—it was sung to the tune of Solidarity Forever?

A. Yes, sir.

Q. Part of that apparently is "The workers know the bosses are their greatest enemy". Do you recall that?

A. Yes, sir; I heard that.

Q. Is that what you refer to as your difference of opinion as to whether there had to be contention between the management and the workers all the time or whether you could get along amicably?

A. How is that, Mr. Reed?

Q. Is that what you refer to in your testimony where you said something about contention between the management and the men or arbitration, I believe, is the word you used?

A. Yes, this here.

Q. It is this——

A. That there. That was in existence at that time, yes.

Q. And the difference between your view and that of the Federation was that you could settle your matters amicably; is that right?

[fol. 977] A. Yes, sir.

Mr. Reed: I offer in evidence Respondent's Exhibit 5.

Mr. Kleeb: No objection.

(The document heretofore marked "Respondent's Exhibit No. 5" for identification, was received in evidence.)

Mr. Reed: That is all.

Mr. Kleeb: That is all.

Trial Examiner Walsh: There are one or two questions that I want to ask.

By Trial Examiner Walsh:

Q. You have been at the hearings in the past day or two, haven't you?

A. Yes, sir.

Q. And you have heard some of the testimony to the effect that employees of the Heinz Company on company time took petitions for the Employees Association to various fellow employees?

A. I have heard them testimonies; yes, sir.

Q. Had you known about it before?

A. It was recalled to my attention by some of our own members, and I instructed them to do this either on their lunch period time or going to and from work, or else at our meetings that we had held at the little church.

Q. You instructed whom?

A. I instructed our people, our representators.

Q. And you instructed them to instruct the other people who had the petitions?

A. Yes, sir.

Q. Why did you do that?

A. Because it is my policy, that when you are forming an organization, the least that you can possibly do is to live up to what rules that you think is justice yourself and not break them and not try to have any rules broke. Therefore, you will be able to reach a better agreement or a better understanding with the parties that you may approach for such understanding or agreement.

Q. You understood, then, that such action on the part of these employees was contrary to the rules of the shop, the factory?

A. I admit it is contrary.

Q. You knew that? That was your understanding?

[fol. 978] A. Yes, sir.

Q. So you wanted them to understand it, too?

A. Yes, sir.

Q. Well, it was quite an unusual procedure, wasn't it?

A. It was, yes, sir.

Q. For employees to leave their work for half an hour, an hour or two hours, and, on company time. How do you account for the fact that that every unusual procedure was embarked upon by these employees?

Mr. Reed: I hesitate to object to an Examiner's question, but the question assumes a state of facts which has not been proven by anything in this case.

Trial Examiner Walsh: Well, it only assumes two facts: One, that this solicitation occurred on company time, of which there is no contest; and, two, that it was known to be done and witnessed.

Mr. Reed: It assumes that the people left their work for half an hour or two hours or so at a time; it assumes that the testimony to that effect, practically all of which is contradicted, was true, and, besides, assuming that the witness knew of it; and it fails to take into account the fact that such occurrence, if it did happen, was not a practice but a very infrequent occurrence at the plant.

Trial Examiner Walsh: If I understand Mr. Bennett correctly, he had heard of this.

The Witness: I heard rumors of it, yes, sir.

Trial Examiner Walsh: And he considered the rumors sufficiently substantial that he called the representators' attention to it, to give instructions to those employees not to use the time that way.

Mr. Reed: Yes.

Trial Examiner Walsh: So that it was a situation with which he was confronted and with which he dealt, and there is no doubt about the witness believing such a situation existed. Am I right?

Mr. Reed: In some instances, yes.

Trial Examiner Walsh: Yes. Now, that is all that is assumed in this question.

Mr. Reed: There is no evidence that he knew of anyone leaving for two hours, nor half an hour.

Trial Examiner Walsh: Any period of time that was company time. Make it any period of time, 15 minutes.

By Trial Examiner Walsh:

Q. It occurred, according to your knowledge?

[fol. 979] A. It has been rumored to me that it has occurred, but I don't know any specified time or how long a time.

Q. Yes. Well,——

Trial Examiner Walsh: It is a somewhat curious situation, Mr. Reed. I will overrule your objection. I am some-

what hesitant in doing so. I don't want to misuse the prerogatives that I have.

Mr. Reed: Exception.

By Trial Examiner Walsh:

Q. But I still feel that it is important to know, Mr. Bennett, how you accounted, since you dealt with this situation, how you accounted in your own mind for this activity on the part of some of these employees.

A. In what way do you mean, how I accounted for it?

Q. How did you in your own mind answer the question, "Why should they do it? Why did they do it?"

A. Why, I believed that the policy to be followed out is pure and simple, that if you are working for a firm, and they are paying for your time being there, you should be on the job.

Q. Yes, yes. I understand. But, now, there was a young girl on the witness stand yesterday who testified that she left her work for about 45 minutes.

A. Yes.

Q. And solicited signatures. Now, that is a case.

A. Yes, sir.

Q. That is what we are talking about. You heard rumors of that, or several instances, and you thought it of sufficient importance to correct it by giving instructions to your representatives.

Now, in your thinking about the matter, how did you explain to yourself that this girl or other girls or other workers had left their work to solicit, on company time, these signatures?

A. Why, I instructed them not to do so.

Q. You must have wondered, "Well, why should they do that sort of thing?"

A. Well, our first meeting with Mr. Dunbar in the presence of Mr. Kleeb on May 24th or May 25th, and also our legal adviser being present at that time, Mr. Dunbar quoted part out of a book there in regards——

Q. Of course, this must have been before the 24th, because all of that we are talking about occurred before the [fol. 980] strike. So that your mind must have thought about this prior to the thought that you are talking about now.

A. I can't recall that the witness specified any particular day or any particular time.

Q. It was prior to the strike?

A. That was prior to May 24th?

Q. Well, I can tell you that, yes. She did testify so, that it was prior to the strike.

A. It was? I don't recall of that.

Well, as I told you, it is always my policy if you have any group that I may be a representator of, or a committee of, at any time, to follow out a policy which they think is fair and just to their own self, and then the parties that they want to have implicated in with any understanding will always no doubt be trying—try and be fair and square with them.

Q. Now, your organization, the organization of which you are an officer, the employees association, still exists; does it?

A. It still exists, yes, sir.

Q. It has existed steadily since the election?

A. Yes, sir; it has still been in existence since the election.

Q. The agreement which your company and the Heinz Employees Association entered into some months ago, however, does not stand now; does it?

A. That is not in existence.

Q. Yes, that was thrown out by the result of the election?

A. Yes, sir.

Q. Yes. What do you understand to be the status of your organization since the election?

A. How is that?

Q. In regard to collective bargaining with the company? What is the position of the employees' association with regard to collective bargaining with the company now, in your understanding?

A. In what way do you mean?

Q. Well, what rights have you as a collective-bargaining agency?

A. What rights have we to be a collective-bargaining agency?

Q. As a collective bargaining agency?

A. We have no right whatsoever. We have never tried to assume that right.

Q. What do you exist for?

[fol. 981] A. Why, for social functions, and so forth, as that type, according to our constitution and by-laws.

Q. Have you had social functions since the election?

A. Yes, sir.

Q. What kind?

A. Having picnics and other affairs.

Q. What other affairs? Picnics and what?

A. We had a card party and dance on the 29th of October, which was busted up by a tear-gas bomb from some party.

Q. But as a collective-bargaining agency you don't consider yourselves as having collective-bargaining purposes any more; is that right?

A. Not at the present moment, no, sir.

Q. You might some time in the future?

A. You can never tell.

Q. Yes.

Trial Examiner Walsh: I think that is all I have.

Further redirect examination.

By Mr. Reed:

Q. Do you think it would be possible for there to be any organization started in that plant without some occasional infractions in violation of the rules by solicitors?

A. You mean at the present moment?

Q. Any time.

A. Well, I don't know, Mr. Reed, whether there would or not. I think that the drive of any group coming in there trying to put on a drive, I don't know as it could be done, because, at the present time, now, we have between 1,050 paid-up members in our organization, and the only drive that is left to be put on is to take over the rest of the members that is not affiliated with us. Is that what you are after?

Q. I think perhaps you didn't understand my question.

A. Maybe I don't.

Q. Did you see the American Federation of Labor soliciting members during working hours, working time?

A. Did I see that?

Q. Yes.

A. Yes.

[fol. 982] Q. Do you think if there was a drive on by y-ur organization or any organization that there would be people

who would violate the rules and solicit during working hours?

A. Well, now, if any of your group at the present time— I really believe now that it is my understanding of people, on account of being among them, if they seen anybody else doing it—it is like a school kid, they want to do it likewise, and no doubt that they would try to.

Q. You still regard your organization as a labor organization, don't you?

A. Yes, sir.

Mr. Reed: That is all.

Recross examination.

By Mr. Kleeb:

Q. Have you told the Examiner, in response to his question, what the purposes of the association are at the present time, all their purposes? I mean, what are the purposes of the association?

A. What are the purposes?

Q. Right now.

A. Of the association at the present time?

Q. Yes, since the election.

A. Well, we are still holding together under our constitution and by-laws, and they are specifically stated on there.

Q. The purposes that are stated in there?

A. Yes, sir.

Mr. Kleeb: That is all.

Trial Examiner Walsh: I have but one other question now that I had forgotten when I was talking.

By Trial Examiner Walsh:

Q. It has to do with the agreement that your association and the Heinz Company entered into. In your opinion was that an agreement to which the company and the association were bound?

A. Well, there is possibly two ways—there might be half a dozen ways or different interpretations on it. I believe it is my understanding that after the statement that was issued on May 29th in the Pittsburgh papers and with the amount of letters that was sent out to the employees that worked for that firm, I believe that there were some binding

to it for the fact that there was enough of evidence there to show that they had entered into an agreement with the collective-bargaining group of said organization.

[fol. 983] Q. Now, I realize that this is a subject which we ought to turn over to these lawyers to discuss, but I am interested in getting the opinion that you and your associates of the collective-bargaining committee have on this question, and what, perhaps, you were advised by Mr. McDonald.

Now, you evidently hadn't any settled conviction that this agreement that you entered into was binding on the company.

Was it your impression that the company would abide by it? But you didn't, I take it, go into the question whether, if the company violated it, you could get a court to enforce those provisions; did you? You didn't go into that?

A. I think the last paragraph, No. 10, if I ain't mistaken on that, plainly states that such a thing would be into effect, or something similar to that, until such time that further discussions may arise. See? So, it is possible that we might have violated it ourselves two days after we agreed to it, when we find out that conditions has arose that might be a great injury to some of our employees. We wanted to reserve the right to have that attended to immediately, and I think that your last paragraph in there will clearly state that.

Q. Do you understand the last paragraph to have made it possible for the company to abide by the agreement or not abide by it entirely or in any particulars?

A. I think that it makes it this much possible, that the company is binding to that agreement just as well as we are, until they see that it is an injury or something of that sort to them, the same as it might be to us.

Q. Well, then, by voluntary action they could withdraw?

A. The thing could be worked out both ways. They had the right to reopen it and we had the right to reopen it at any particular time.

Q. Then you didn't consider it a contract in the sense that contracts are entered into by two parties and that the courts enforce?

A. Well, there might be certain definitions of the word "contract" as to whether you would call it an actual contract or agreement.

Q. I don't think either of us, perhaps, is competent to say whether or not this is a contract. That, obviously, is outside your and my domain, but I am wondering whether [fol. 984] you and your committee considered it a contract in any reasonable sense.

A. As binding, we did.

Q. Did Mr. McDonald advise you in that way?

A. Yes, sir.

Q. Do you happen to know whether or not courts in the State of Pennsylvania enforce trade agreements between employees' association——

A. Well, I might have some knowledge of it. I wouldn't say I will. I might—I might have some knowledge of it, and it is my understanding that that would stand just as good as a signed agreement, through our legal adviser.

Q. Do you know whether or not the courts enforce in the State of Pennsylvania such contracts? Do you know?

A. Sir.

Q. Do you know whether the courts of Pennsylvania, the State courts, enforce union contracts? Do you happen to know? In many States they do and in many States they do not.

A. Yes.

Q. Do you happen to know?

A. Do I happen to know whether the State of Pennsylvania does?

Q. That is right, that the State courts here do enforce these contracts, enforce contracts that are entered into by unions and companies.

A. Well, I believe, if I am correct in saying, it is not so long ago here a certain court had enforced an agreement in the Ambridge situation. Am I mistaken on that?

Q. Yes. I think that you are considering something that doesn't fall into this question.

Mr. McDonald, by the way, would you call him an outsider?

A. Sir?

Q. Would you call Mr. McDonald an outsider?

A. Would I call him an outsider.

Q. You refer to outsiders in unions, and, generally, you seem to imply that outsiders with unions are unnecessary. Do you consider this McDonald an outsider?

A. Any organization has got an outsider connected with it to some extent for legal advice.

Trial Examiner Walsh: That is all. I am through.

Mr. Reed: That is all.

[fol. 985] Trial Examiner Walsh: You are excused. Thank you, Mr. Bennett.

(Witness excused.)

Trial Examiner Walsh: Would you like a recess for five minutes? It is a good time.

Mr. Reed: I guess so.

Trial Examiner Walsh: All right. Five minutes.

(A short recess was had.)

Trial Examiner Walsh: The hearings will come to order.

Mr. Reed: Mr. Kirschner.

FRANK KIRSCHNER, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Mr. Kirschner, you are employed by the Heinz Company, aren't you?

A. Yes, sir.

Q. What is your job?

A. Machinist.

Q. Are you paid by the hour?

A. Yes, sir.

Q. You were permitted to vote in the election the Labor Board held?

A. I was.

Q. You heard Mr. Bennett's testimony about the formation of this employees association, didn't you?

A. I did.

Q. You were one of the five original founders, were you?

A. I was.

Q. Did Mr. Bennett's testimony state substantially what occurred in connection with the organization of that association?

A. As far as I know, it was.

Q. Was there any time that any official of the company or anybody in a supervisory capacity had anything to do with the formation of it or dictated or dominated it, to your knowledge?

A. No, sir, there wasn't, that I know of.

[fol. 986] Q. Were you a member of the bargaining committee that dealt with the company during the strike?

A. I was not.

Q. You were not a member of that?

A. No.

Q. Do you know whether or not there was solicitation of membership during working hours by members of the American Federation of Labor during the drive?

A. I heard there was.

Q. What instructions did you give to people whom you engaged as solicitors respecting whether or not they should do this on their own time or on company time?

A. Well, I told them that they had better do this on their own time; not inside the—during working hours. It was all right at noon time, on their own time, or evenings, meetings.

Q. What were the conditions at the plant during the strike? Was it possible for you men to go to work without violence, or what would have happened, in your opinion?

A. No, I wouldn't say you could get in there without violence.

Q. Were you down at the entrance?

A. I was.

Mr. Kleeb: I object to this line of questioning as incompetent, as immaterial and irrelevant.

Mr. Reed: The question seems to be raised about a contract that didn't go into effect and, therefore, the question of why it didn't and what the situation is is material.

Trial Examiner Walsh: Objection overruled. You may answer the question.

Q. The question was what you observed as the condition around the plant which might have interferred with entrance?

A. Well, there was so many pickets around there that I don't see how you could have got through without any trouble.

Q. Were any of the pickets carrying weapons, or clubs?
A. I didn't notice any.
Q. Are you an officer of the association now?
A. I am a director.
Q. How long have you worked for the Heinz Company?
[fol. 987] A. 25 years the 24th of last May.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. You are a group leader?
A. No, I am no group leader, I am machinist.
Q. What?
A. I am a machinist.
Q. Well, I believe Mr. Heinrich in his testimony——
A. Well, if I am a group leader I don't know anything about it.
Q. What did you say?
A. If I am a group leader I do not know anything about it. I was supposed to take care of machines and keep them in working order.
Q. In what department?
A. I take care of olive oil and vinegar labelling machines. That is in certain departments. I go from department to department.
Q. In those departments you mentioned?
A. Yes, sir.
Q. How many machines are you responsible for?
A. Oh, probably eight.
Q. Do you have an assistant or helper?
A. Well, not all the time. At times I do and at times I don't.
Q. Does that depend on how many machines are operating?
A. No, that depends on how heavy the work is I have to do.
Q. Do you have a shop man or anybody else, works with you, besides an assistant?
A. No, just at times.
Q. This assistant, just at times?
A. Yes.
Q. But most of the time you are alone?

A. Yes, sir.

Q. And you have been engaged in that kind of work for how many years?

A. Oh, 15 years.

Q. And how many employees are working on these machines? How many are affected?

A. Oh, probably 25 or 30.

Q. 30 employees?

A. 25 or 30.

[fol. 988] Q. Men and women?

A. Men and women, yes.

Q. They actually operate the machines, do they not?

A. Yes, sir.

Q. You do not do that kind of work?

A. At times; whenever they leave I probably take——

Q. Oh, just in emergency or relief?

A. Yes.

Q. But, basically, your job is to fix a machine which is broken down?

A. It is.

Q. Or you fix any defect that might arise in any of the machines?

A. And adjust them, yes, sir.

Q. And you are told to do that or asked to do that, rather, either by one of the employees or foremen or forelady?

A. Or the foreman in the department calls me up.

Q. And says, "Come over to this department and fix this machine"?

A. Yes.

Q. So, daily you are circulating around these departments, around these machines, fixing them?

A. Yes, sir.

Q. And that takes up your full day?

A. It was and if it doesn't, I have to fix—repair work on different parts and replace them and put them in whenever they do wear out.

Q. And your hourly rate is what?

A. $1.01 and a fraction.

Q. $1.01 and a fraction. When did you first hear anything about the association, as you recollect it?

A. Well, I guess the early part of January.

Q. And what was the occasion of your hearing about it?

A. Well, there was rumors going around—well, in fact, Mr. Bennett and I sat at the dining room across from one

another and at times we talked about different things.

Q. What rumors were going around?

A. I didn't quite understand your question first.

Q. You started to say there were rumors going around.

A. I thought you meant this A. F. of L. and I understand what you mean now.

Q. What did you understand about the A. F. of L., about [fol. 989] the rumors going around?

A. I thought you were coming around later. I didn't know what you meant, first. Will you please repeat the question?

Q. I asked you what occasioned your hearing about the association, and you said there were rumors going around and you stopped, and I wanted to know what you meant by rumors going around?

A. This is later on. I understand—I told you I didn't get your question at the beginning.

Q. What do you mean by later on?

A. Well, later on there was rumors going around about the A. F. of L. starting up an organization.

Q. Well, what about that?

A. Well, nothing.

Q. Nothing about that?

A. No.

Q. You didn't mean anything by that, rumors going around, then, did you?

A. No.

Q. Tell us about this association. When you first heard about it.

A. Mr. Bennett, as I say, sat across the table with one another at the dining room and one thing after another came up and finally he mentioned it to me about starting up this organization and wanted to know if I would go along with him and he knowed that I had belonged to the A. F. of L. before and I told him I thought it was a pretty good thing and I said I would go along.

Q. You belonged to the A. F. of L. when?

A. Well, back in, I think, around 1906, 1907.

Q. What union?

A. International Association of Machinists.

Q. And you dislike the A. F. of L., don't you?

A. Well, I sure do, because I was in three strikes and they never got nothing for me so why shouldn't I?

Q. And because of that you were for the inside organization?

A. Naturally.

Q. Why would you be for an inside organization because of some strike you were in of the A. F. of L.?

A. Because I think——

Mr. Reed: This is objected to as not cross examination. The witness has a right to go into any organization he wants to. His motives or reasons haven't anything to do [fol. 990] with it, on cross examination.

Mr. Kleeb: I don't question his right to go into any kind of an organization he sees fit, but the man has stated a dislike for the A. F. of L. and an activity in this association.

Mr. Reed: Do you represent the A. F. of L., Mr. Kleeb?

Mr. Kleeb: And I asked him if the strikes motivated him going into the association; whether that was the reason or not.

Mr. Reed: The A. F. of L. isn't supposed to be a party to this procedure, and you are not supposed to represent them, so what's the difference, what he thinks?

Mr. Kleeb: I am not only not supposed to represent them, and I do not represent them and you know that.

Mr. Reed: That's a matter of opinion?

Mr. Kleeb: I can ask this man a question and explain my reason for it.

Trial Examiner Walsh: You are interested, I take it, in discovering his motives in this organization?

Mr. Kleeb: That's right.

Trial Examiner Walsh: And the reference to the strike in 1906 as a motive for the reason?

Mr. Kleeb: That's right.

Trial Examiner Walsh: The objection is overruled. You may answer that question.

Mr. Kleeb: Will you read the question?

(Previous question read by the Reporter.)

A. Well, I can answer it this way. That all the strikes I were in I never got a thing out of them and I figured if we started an inside organization we could do more to get something than they did at that time.

Q. How did you figure that the inside organization would get more?

A. Well, we all worked together and we know what goes

on and why couldn't we get more than outsiders could get for us?

Q. That's why you thought you could get more?

A. Sure.

Q. Did Bennett tell you why he was forming this association?

A. Well, he did, in a way.

Q. What did he tell you?

A. He told me just as I stated now that he thought we [fol. 991] could get more out in the inside organization than an outside organization.

Q. But there was no outside organization, was there?

A. Well, there was—certainly, the papers was full of it, all along.

Q. But there was no outside organization at the Heinz Plant, was there?

A. No, not at that time, no.

Q. Did Bennett tell you why he was starting an association at that time and not later?

A. No, I don't think he did.

Q. No reason given for picking that particular time?

A. No, not that I know of.

Q. Well, why, Mr. Kirschner; here you are a man who worked for this company a long time and you were satisfied, weren't you?

A. Yes, sir.

Q. And there was no other organization in the plant at that time, was there?

A. No.

Q. Why were you at all interested, being satisfied, with no other organization, of all of a sudden forming an employees association?

A. Well, they were forming associations and organizations all over the country, as far as I could read in the paper, and I think that was mostly the reason.

Q. Isn't it the purpose of organizing the employees to bargain with the management to improve their conditions?

A. It is.

Q. But you were satisfied, weren't you?

A. In a way I was satisfied, yes.

Q. In a way you weren't?

A. In a way I weren't, no.

Q. How weren't you satisfied?

A. Well, because I knowed, with the other strikes I was

in and if we got an outside organization in there why we wouldn't be satisfied again. I knowed, at least, I wouldn't.

Q. Oh, then the purpose of the organization, as far as you were concerned, was to prevent an outside organization from coming in?

A. No, not necessarily that.

Q. What was it? What do you mean by the "outside"?

A. We tried to get enough members to go to bargain with the company.

[fol. 992] Q. Before an outside organization got in?

A. Yes.

Q. And that was the purpose of the organization, wasn't it?

A. It may have been.

Q. Don't you know?

A. No, I do not.

Q. You were one of the two starters of it, weren't you?

A. Well——

Q. Then you don't know what its purpose was in the beginning, do you; do you or don't you?

A. Well, in a way I do.

Q. And in a way you don't?

A. Yes.

Q. Now, what way do you know?

A. Well, he told me that if we could get this organization together it would be better for all of us.

Q. Who told you that?

A. Mr. Bennett.

Q. And you accepted that and went along with him?

A. I did.

Q. And "being better for all of us" was the purpose of the organization, is that right?

A. As far as I know.

Q. And you said in a way you don't know. What did you mean by that? In a way you didn't know what the purposes were?

A. Well——

Mr. Kleeb: May the record show a long pause, please.

Mr. Reed: Are you asking him what he doesn't know?

Mr. Kleeb: No, he said, he testified in a way he did know the purpose and in a way he didn't know the purpose.

Mr. Reed: I understand your question now to be for the

witness to answer something he doesn't know and I think there should be quite a long pause to that question.

The Witness: What was that question you asked me?

Q. I will rephrase the question, Mr. Kirschner. As far as you were concerned, then, the only purpose of this—of your being active in the forming of this association was because Bennett said it would be better for all of us, all of the employees?

A. Yes.

[fol. 993] Q. That's the only purpose you know about?

A. Well, he knowed that I belonged to the A. F. of L. before so he thought that we would get along these lines and form our own association.

Q. What does that have to do with the purpose of the Heinz Employees' Association?

A. I don't quite get what you mean.

Q. Apparently you don't.

Mr. Reed: Neither do I. Will you explain it, Mr. Kleeb?

Mr. Kleeb: Mr. Reed, maybe you would like to testify too.

By Mr. Kleeb:

Q. I want you to state, please, that when you became active in this year in forming the Heinz Employees' Association, as far as you know, what were its purposes.

Mr. Reed: This is objected to. It's impossible of answering. There was no organization. It couldn't have any purposes.

If he wants to ask this witness what his idea is, that is one thing. He is asking the witness purposes and views of an organization that didn't come into existence for months afterwards.

Mr. Kleeb: The witness knows what I am asking; the purposes of the association.

Trial Examiner Walsh: You can rephrase the question so that it will be tolerable.

By Mr. Kleeb:

Q. What was your understanding after Bennett talked to you? What was your idea the purposes of this organization was?

A. Why, for the betterment of the employees.

Q. That's all?
A. Yes.

Mr. Kleeb: That's all.
Mr. Reed: That's all.

(Witness excused.)

Mr. Reed: Mr. William Ubrey.

WILLIAM UBREY, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Your name is William Ubrey?
A. Yes, sir.
Q. You work for the Heinz Company?
[fol. 994] A. Yes, sir.
Q. You are a member of the employees' association?
A. Yes, sir.
Q. How long have you worked for the Heinz Company?
A. 19 years next April.
Q. What's your job?
A. I work out of the machine shop.
Q. Are you an hourly employee?
A. Yes, sir.
Q. You are not a foreman?
A. No, sir.
Q. Did you hear Mr. Bennett's testimony and Mr. Kirschner's testimony that the employees' association——
A. I did.
Q. You were one of the original five men, I believe?
A. Yes.
Q. Did you hear the discussion that Mr. Bennett gave of how you enlarged this group and chose division leaders and chose people to circulate the petitions, and so on?
A. I did.
Q. Was that a substantially correct statement?
A. Yes, sir.
Q. Of the way the organization was formed?
A. Yes, sir.

Q. Did the management or anybody connected with the executives of the company or anybody superior to you in the company talk to you about doing this or ask you to do it?

A. No, sir.

Q. Nor did it ever attempt to dominate or control you?

A. No, sir.

Q. Or anyone else, to your knowledge?

A. No, sir.

Q. You still belong to the association, do you?

A. I do.

Q. Were you a member of the bargaining committee that got this contract with the company during the strike?

A. No, sir.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. How long have you been with the Heinz Company?

[fol. 995] A. It will be 19 years next April.

Q. How many of those 19 years were spent on the job you are now doing?

A. All of them.

Q. What's your hourly rate?

A. 96 and some odd points.

Q. How many machines do you have?

A. I don't have no machines. I do repair work all through the factory.

Q. What kind of repair work?

A. General repair work.

Q. What do you mean by that; on machines, or windows, or on what?

A. On machines.

Q. General repair work on machines?

A. Yes, sir.

Q. You are a machinist?

A. Yes, sir.

Q. How do you know where to go during the day?

A. My foreman tells me where to go.

Q. Who is that?

A. Mr. Simpson.

Q. Mr. Simpson isn't over the entire factory, is he?

A. He gets calls from the entire factory.

Q. The various foremen or foreladies from the various departments telephone Simpson to send Bill Ubrey up to their department to fix something?

A. Yes; not just Bill Ubrey, there are other machinists.

Q. Yes. And then Simpson will relay that order to you and you will go on and do it?

A. Yes, sir.

Q. How many other men have like positions, under Simpson?

A. He has the millwright department, blacksmith shop; I would say there are 45 men in his department.

Q. Are they all machinists?

A. No, they are not all machinists.

Q. How many are machinists; in a position like your own?

A. I would say about 15.

Q. Are you senior in the service to most of them? That is, are you the oldest in service?

A. I wouldn't say I am, no.

[fol. 996] Q. One of the oldest?

A. One of the oldest.

Q. Yes. When did you first know anything about the Heinz Employees Association?

A. When did I first know?

Q. Yes.

A. Mr. Bennett approached me around the first of January.

Q. Where did he approach you?

A. In the dining room.

Q. And what did he have to say?

A. He asked me about going along and forming an association. We had talked before about being in the American Federation of Labor. I told him I was a machinist in 1915 and 1916 and we was out on a strike and we didn't get nothing, and I gave it up.

Q. You told him that some time before?

A. Before, yes.

Q. Did Bennett tell you whether he and Kirschner were starting this association, or did you know Kirschner?

A. Well,——

Q. Did you know Kirschner was in it at all?

A. No.

Q. So, when Bennett came to you, you had no personal knowledge Kirschner had been approached before that?

A. No.

Q. He told you that, though?

A. He told me he had asked him.

Q. Did Bennett tell you why, at this particular time, he was interested in forming an association?

A. No, he didn't.

Q. Did you ask him?

A. No, I didn't.

Q. You just joined in with him to form this association?

A. Yes.

Q. Why were you interested in it?

A. I were interested, I told him I would go along to help him form an organization.

Q. You were satisfied with your work, weren't you?

A. I was.

Q. Heinzes have always treated you right?

A. They did.

Q. You had no complaints, did you?

[fol. 997] A. No.

Q. Why were you interested in any collective bargaining or any kind of an association?

A. I just were interested. I told him I would go along and help work it out.

Q. Did you say you were or weren't interested in it?

A. I were interested in it; I told him I would go along and help work it out.

Q. Did you say you were or weren't interested? Did you say weren't or were?

A. Were.

Q. You were interested?

A. Yes.

Q. And even though you were personally satisfied with your working conditions, your pay, and your job, you became active in creating an association of employees, is that right?

A. Yes.

Q. And, in your mind, for what specific reason or reasons were you interested?

A. Well, I thought we would get a group of our own—Well, just to get a group of our own to form an association.

Q. That was your reason?
A. Yes.

Mr. Kleeb: That's all.

Redirect examination.

By Mr. Kleeb:

Q. You knew, of course, that drives to unionize industry were going on all over the country at that time?
A. Just what I read in the paper.

Q. And you knew you had had a bad experience with a national union before and you didn't want another, did you?
A. I did.

Mr. Reed: That's all.

Recross-examination.

By Mr. Kleeb:

Q. Had you at any time that you worked for Heinz, prior to this particular time when Bennett approached you, ever tried to form an association?
A. No, sir.

Q. Had you ever spoken to anyone about forming an association?
[fol. 998] A. No, sir.

Q. You had no interest before in an association, had you; in forming one?
A. Association—no, sir. The only time, when I belonged to the Machinists' Union, that's all.

Q. I mean at Heinz'.
A. No, sir.

Q. Your interest was created as soon as Bennett talked to you, is that right?
A. Yes, sir.

Mr. Kleeb: That's all.
Mr. Reed: That's all.

(Witness excused.)

Mr. Reed: John Ubrey.

JOHN UBREY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. You are an employee of the Heinz Company, I believe?
A. Yes, sir.
Q. You are a brother of the preceding witness?
A. Yes, sir.
Q. How long have you worked for the Heinz Company?
A. Going on 29 years.
Q. What is your job over there?
A. Maintenance man, a machinist.
Q. You are an hourly worker?
A. Yes, sir.
Q. You are not a foreman or assistant foreman?
A. No, sir.
Q. You were one of the five men who began the formation of the Heinz Employees' Association?
A. Yes, sir.
Q. Did you hear the testimony of your brother and of Mr. Bennett and Mr. Kirschner that preceded you?
A. Yes.
Q. Did you hear the account of how the five of you began the organization and then took in larger numbers and started out petitions, and so on?
A. Yes, sir.
[fol. 999] Q. Does that state substantially correctly the steps by which you organized this association?
A. Yes.
Q. Did any member of the executive or supervisory staff or any foreman urge you or speak to you about organizing this association, or attempt to dominate or control you in your actions?
A. No, sir.
Q. It was entirely voluntary?
A. Entirely voluntary.
Q. You still belong to it, do you?
A. Yes, sir.

Q. Were you a member of the bargaining committee that met with the management in that agreement that was drawn when the strike was on?

A. No, sir.

Mr. Reed: Cross-examine.

Cross-examination.

By Mr. Kleeb:

Q. Just what is the nature of your work?

A. The nature of my work is repair work, maintenance work, keep up machinery.

Q. Over the entire factory?

A. Well, not quite over the entire factory. It is probably about four or five different buildings.

Q. And out of what department do you work?

A. Out of the bottling department, is the original department, but I cover the machinery in the chow bottling, mayonnaise, peanut butter, and also jell department.

Q. You check up on the machines in those departments?

A. I do.

Q. And over the period of a month you probably cover those departments several times?

A. I cover those every day, two or three times.

Q. Two or three times every day?

A. Two or three times every day.

Q. And you respond to the complaints about breakdowns and repairs?

A. Yes.

Q. And you say you see that the machines are properly repaired and run, is that right?

A. Yes.

[fol. 1000] Q. What is your basic hourly rate?

A. 96 and some tenths.

Q. And how long have you been so engaged at the plant, in this kind of work?

A. I would say probably about 26 years, going on 27 years.

Q. Were you ever an A. F. of L. member?

A. No, sir.

Q. When did you first learn about the Heinz Employees' Association?

A. Some time the first part of this year; January.

Q. And state the occasion. What happened? How did you hear about it?

A. I happened to be in the dining room, which I usually do, eat my lunch in the dining room, and, of course, I don't eat right with Mr. Bennett and them; I eat on the opposite side, and, of course, after our meals we usually get together and sometimes we are playing cards, or might get together and have a chat, so when I got over there, of course, my brother asked me first. He said Mr. Bennett wanted to see me in reference to joining an organization or getting an organization going, so I says, "O. K.; what is it?"

So then Mr. Bennett explained to me what the organization was and he wanted to know if I wanted to go along.

Q. What did he tell you?

A. He asked me if I would go along with him and distribute and getting petitions to join an association to be independently run by our own employees, and I said, "Sure," I would go along with them.

Q. Did Bennett have any petitions at that time?

A. None at that time, no, sir.

Q. You men drafted them later on, didn't you—Prepared them? Right?

A. Yes, sir, later on.

Q. For what reason or reasons were you interested merely in Bennett's suggestion of an association or getting active in such a move or drive?

A. Well, from what I, of course, had been reading in the papers, where I seen there was so much of a turmoil in the company all over sit-down strikes in places, and things like that.

Q. Why did that influence you?

A. Well, I thought that anything like that there would, of course, with any organization, to my mind—I had no [fol. 1001] use for it, that is, in the factory.

Q. You mean an outside labor union?

A. Outside labor organization in the factory. I was always in cahoots with them for building trades, and things like that, but for the inside, I had no reasons for it. I of course, worked so long in the Heinz Company and, of course, when I seen that they were forming these independent organizations to prevent, try to prevent the sit-down strikes, as they called them at that time, around through why, I, of course, I said, "Well, sure, I will go along and see if we

can't prevent something like that, if we can get an organization here and prevent something like that, and I am willing to go along and do it."

Q. Bennett told you that is what he wanted?

A. That was our——

Q. To form this organization to prevent an outside organization from getting in?

A. Well, he didn't say that it was to prevent an outside organization.

Q. What did he say?

A. That we would get an organization together.

Q. For the purpose of preventing sit-down strikes?

A. For the purpose of preventing. That was my opinion of it, to prevent——

Q. That was your opinion of the purpose?

A. To prevent anything what they would call, as they say, these sit-down strikes.

Q. Was there any evidence around the factory that you observed——.

A. Not at that time there wasn't, no. As I tell you, all I have known is what from what I have seen in the paper, which was generally going around through all factories and small institutions also.

Q. Was there any reason at all, to your knowledge, at that time, to form any kind of an organization?

A. There wasn't only, to my knowledge, of trying to see if we could get something like this together, why it was o. k.

Q. Mr. Ubrey, you stated that in your minds, the purpose was to stop sit-down strikes or something like that happening?

A. If they would come, yes.

Q. Is that right?

A. If they would come.

Q. But there was nothing going on, nothing happening [fol. 1002] at the Heinz Plant at that time; was there?

A. Not at that time.

Q. There was nothing to indicate that there was any labor trouble at that time, was there?

A. Outside there was. Not at the factory.

Q. At the Heinz Plant?

A. Not at the Heinz factory.

Q. You individually never gave that association a thought, however, until Bennett mentioned it to you?

A. Mr. Bennett mentioned it to me, yes, and asked me if I was willing to go along with them, and I says, "Positively, yes."

Q. Now, you testified that you have no time or some such expression for outside labor unions?

A. That is right.

Q. Why is that?

A. Why?

Q. Yes.

A. The only think that I had, of course, where we were inside working continuously, as I said, why, of course, I have worked inside the Heinz Plant for going on 29 years, and we never had anything like that at the factory. There has never been any disturbance of any kind at the factory; and I couldn't see where a man was working twelve months out of a year had to belong to anything like that.

Q. Yes, but what specific reason, what specific reasons did you have for objecting to an outside labor union in any plant? As you said, you did so object?

A. To any organization.

Q. Yes, outside union, an outside labor union.

A. Well, as I said, of course, if we got along without any organization, could get along in there without any labor organization——

Q. Then you weren't active in the formation of this association?

A. I was asked——

Q. Just a minute.

A. Pardon me, sir.

Q. You weren't active in the formation of this association because of dissatisfaction with working conditions, were you?

A. I wasn't.

Q. And you weren't active in the formation and administration of this association for the purpose of changing working conditions at the Heinz Plant, were you?

[fol. 1003] A. I was willing to prevent, help to prevent just because of what I would say at first the sit-down strikes.

Q. Your only interest in being active in the formation and administration of this association was to create a being or an association as an offset to any labor trouble or any outside labor unions; wasn't it?

A. That may come.

Q. What?
A. That may come in.
Q. That might come in?
A. Yes.
Q. And it was also for the purpose, was it not, of stopping the possibility of employees sitting down and engaging in a sit-down strike; wasn't it?
A. What was that?

Mr. Kleeb: That is all.
Mr. Reed: That is all.

(Witness excused.)

Mr. Reed: Mr. Edward Kranz. This is Edward Grznkowski.

EDWARD KRANZ, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. You call yourself Edward Kranz?
A. I don't call myself that. They call me that.
Q. What is the pronunciation?
A. Gron-kow-ski. The "z" is silent.

Trial Examiner Walsh: The "z"?
The Witness: The z. It is Grz——

By Mr. Reed:

Q. You work at the Heinz Plant?
A. Yes, sir.
Q. How long have you worked there?
A. It will be 16 years next March.
Q. You were one of the original five who formed the Employees Association; weren't you?
A. Yes, sir.
Q. You were in court when Mr. Bennett, both Ubreys, and Mr. Kirschner, testified about the formation of that organization?
A. Yes, sir.

Q. You heard their testimony about how you enlarged the group and how petitions were circulated in that plant?
[fol. 1004] A. Yes, sir.
Q. Does that substantially state correctly what did happen in the organization of this association?
A. Yes, sir.
Q. Did any executive of the company or superintendent or foreman or anyone connected with the company ask you to do this or have anything to do with the formation of this association?
A. No, sir.
Q. It was entirealy voluntary?
A. Yes, sir.
Q. You are still a member of the association?
A. I am.
Q. Were you a member of the bargaining committee that negotiated the contract during the strike?
A. No, sir.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. Are you a paid-up member?
A. Well, now, let's see, I have three months to go yet. I got nine months paid.
Q. Three months to go before you owe any more?
A. Yes.
Q. And you have attended the meetings regularly?
A. Yes, sir.
Q. When did you first learn about the association?
A. Sometime in January I met Mr. Bennett going out——
Q. Of this year?
A. Yes, sir.
Q. You met Mr. Bennett where?
A. Going out from work.
Q. Tell us what happened.
A. Well, as I was going out from work, Mr. Bennett and I met. He asked me—he told me about the association he was trying to form. He asked me if I would be interested in it. And I told him I would.
Q. Did he tell you any more about it?
A. That was all we had that night.

Q. Did he tell you what the purpose of it was?

A. Well, the purpose was that we wanted to organize our own independent association.

Q. Did he tell you at that time that he had already recruited the Ubrey boys?

[fol. 1005] A. That is how he told me, yes, sir. He told me about Ubrey and Frank Kirschner.

Q. So that when he talked to you, he told you that he and these other three already were working on it?

A. Yes, sir.

Q. You say that is all he told you that night?

A. Yes, sir.

Q. When did he tell you anything again?

A. Well, when we met again, it was at his home, and we talked it over, and they told me that—we tried to form an association down at work.

Q. You met with the other fellows?

A. Yes, sir, Frank Kirschner and both Ubreys.

Q. The five of you met?

A. Yes.

Q. Did you belong to any outside labor union?

A. Never.

Q. You are opposed to them, aren't you?

A. Why, I don't say. I never belonged to any. I don't know anything about them.

Q. You were never interested in any labor -rganizations of any kind, were you?

A. Not before, no.

Q. Why did you become interested all of a sudden this year?

A. Well, I thought it was a good thing to have around. I was interested for my own benefit and for the employees' benefit.

Q. Did you have a lot of bones to pick with the company or were you satisfied?

A. Oh, I didn't have no bones to pick with the company. I was satisfied.

Q. Perfectly satisfied with your job, weren't you?

A. Yes.

Q. You had no grievance to raise?

A. No.

Q. Got along fine?

A. Fine.

Q. Just like the other fellows got along with the company?

A. Yes.

Q. Why were you interested in any collective agency of any kind if you were so perfectly satisfied with everything?

Mr. Reed: I object to this question in the form in which it is stated. The witness can join an organization for no [fol. 1006] reason at all. He doesn't have to have a reason to join.

Mr. Kleeb: He didn't join. I don't think he joined. I think he formed. He was forming an organization.

Mr. Reed: Well, he can form an organization for any purpose or no purpose.

Mr. Kleeb: That is right. I think we are entitled to know why he was interested in forming.

Trial Examiner Walsh: Objection overruled. You may answer the question.

A. For the reason why I was interested in it.

Q. Yes.

A. I told you we would like to have something around there that we were all interested in. The five of us, we talked it over, we would like to have an association in there for the benefit of my own as well as their—the rest of the employees.

Q. For what reason?

A. Well, for just take any reason. Suppose some of them didn't feel that they were treated right?

Q. Yes.

A. Now, if we had an association, we would take care of that, wouldn't we?

Q. Yes. That is one of the reasons, is it?

A. Yes.

Q. How many years did you work for the company?

A. 16 years.

Q. For 16 years you didn't see the necessity for such an organization, did you?

A. No, it never came up before.

Q. You never thought of it yourself?

A. No, no.

Q. Just Bennett came around and gave you the idea?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Then you became very interested?
A. Right.

Mr. Kleeb: That is all.

Redirect examination.

By Mr. Reed:

Q. I don't think I asked you what your job is.
A. My job, I am a glass inspector and a scale repairman.

Mr. Reed: That is all.

[fol. 1007] Recross examination.

By Mr. Kleeb:

Q. Just a minute. What is your rate per hour?
A. 71½ cents an hour.

Q. It is a fact, is it not, that your job does take you all over the factory?
A. Yes, sir, all over the plant.

Q. You contact a lot of employees?
A. I can take you all over the plant and show you every place there is there.

Q. I say, you contact a lot of employees, don't you?
A. Yes, sir.

Q. Did you have anything personally to do with drafting the constitution?
A. With drafting, no, sir.

Q. Or drafting the by-laws?
A. No, sir.

Q. You had nothing to do with that, did you?
A. No, sir.

Q. Did you have anything to do with the wording of the petitions that were circulated?
A. No, sir; that was all up to Mr. Bennett.

Q. The same with the wording of the membership card?
A. Yes, sir.

Q. And the constitution and by-laws? That was up to Mr. Bennett?
A. Mr. Bennett and Mr. McDonald.

Q. Yes. Now, everything was up to Mr. Bennett, wasn't it?

A. Yes.

Mr. Kleeb: That is all.

Trial Examiner Walsh: Witness is excused.

(Witness excused.)

Mr. Reed: Mr. Ramming recalled.

ARTHUR RAMMING, a witness recalled by and on behalf of the Respondent, being previously duly sworn, was examined and testified further as follows:

Direct examination.

By Mr. Reed:

Q. You testified the other day and you are just back on another subject now; is that right?

A. Yes.

Q. Were you a member of the committee of the association that conducted the negotiations with the company dur-

[fol. 1008] ing the strike?

A. Bargaining committee, yes, sir.

Q. Yes. Do you recall when you met or for how long you met or how frequently you met in those meetings before that agreement was announced by the company?

A. Well, my first notice was early Saturday morning. I think I was chased out of bed with a telephone call and was told to get down to the Northside as soon as possible, that the company had recognized our association, and that we were to meet them Saturday.

Trial Examiner Walsh: That was Saturday, May 29th?

The Witness: 29th.

Mr. Reed: May 29th.

By Mr. Reed:

Q. And you were in session all of Saturday and Sunday and Monday, weren't you?

A. Not all of Saturday. We met at the church, and we went over to the Wm. Penn Hotel and met Mr. Riley and Mr. Shinabarger, and they told us to come back with our de-

mands. We came back that afternoon with our demands, and after that they looked at them. They said, "Go back and bring something better than that."

Q. Well, there were some long sessions there, weren't there?

A. Sunday and Monday. Sunday until past midnight and Monday until, oh, way, after midnight. I think I got a 3 o'clock car home.

Q. What were you demanding first?

A. Well, we had five articles. First was a 20 per cent increase and the second was a five-day, 40-hour week, and time and a half for over time, and a minimum rate for pieceworkers, and vacation with pay, one week for one year's service, and two weeks for ten years or more.

Q. After these negotiations you reached an agreement about certain increases and certain changes an hour; is that right?

A. Yes.

Q. That was announced by the company; is that right? That was announced by the company, was it?

A. It was. It was in the newspaper on Tuesday morning.

Q. You heard the testimony of Mr. Bennett, did you?

A. Yes, sir.

Q. Did you hear his testimony about the negotiations that [fol. 1009] were in progress between the time you were recognized and the time this agreement was arrived at?

A. Yes, sir.

Q. Was that substantially correct?

A. It is.

Q. You were not present, I believe, on the evening of the 28th, when he was sent for, and the company announced recognition?

A. No.

Q. Had you previously been demanding recognition?

A. Well, we had—we were at a meeting on, I think, a week or so before that. Well, it was, to be exact, the 24th, when I was one of a committee that was invited to meet with Mr. Riley, and we told him that we wanted to be recognized as a bargaining group, and Mr. Riley denied us that right on the strength of—because we could not show why we should be recognized. And we told him we had over 1300 signatures, and he said, "Well," what he said, "that still doesn't satisfy me."

Q. Were you at any of the meetings at the Mayor's office during the strike?
A. No, sir.
Q. You weren't in those arrangements?
A. No, sir.
Q. What is your occupation over there?
A. A machinist.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. How long have you been a machinist?
A. Well, I spent 25 years in machine shops.
Q. How long at the Heinz factory?
A. Almost seven.
Q. All that time you worked as a machinist?
A. Yes, sir.
Q. What is your hourly rate?
A. Why, I gave it to you yesterday, 1.08.
Q. Oh, yes. Do you work throughout the factory or in one department or in a few departments?
A. Oh, I have a department that I am—that I work in, but we build machines; these machines are scattered all over the world now.
Q. I don't understand that, Mr. Ramming.
A. Well, we build machines and these machines, some of them are in London, some are in Australia, some are scat- [fol. 1010] tered all over the country.
Q. Machines built for various branch factories of the company?
A. Yes, sir.
Q. You are a highly skilled worker and it is a highly skilled job that you do; isn't it?
A. Well, I consider it such, yes.
Q. Yes. How many men do like work as you do?
A. Well, there is four in this particular department. It is an experimental shop.
Q. Can you name the other three?
A. Yes, Chester Veronsky and Robert Orr, and Harry Dunkirk.
Q. When did you first join the association?
A. Well, I signed an application on May 21st.

Q. A few days before the strike?
A. Yes.
Q. A few days before the strike?
A. Yes.
Q. I think the 21st was a Friday?
A. Approximately.
Q. Yes. Well, anyway, for whom did you sign it?
A. For whom?
Q. Yes. I mean who asked you to sign it? Who had the paper?
A. Nobody asked me. I went after it.
Q. Whom did you go to see?
A. I went down at noon hour. I went down to Bill Ubrey and asked him to leave me have that paper and I took it up, and two other fellows signed it with me.
Q. How did you know there was a paper?
A. Oh, well, it was general talk.
Q. That these petitions were going around?
A. Sure, both petitions were being circulated.
Q. What both petitions?
A. Ours and the A. F. of L.
Q. A. F. of L. petition?
A. Yes.
Q. Did you ever see the A. F. of L. petition?
A. No, I didn't.
Q. How do you know there ever was such a thing as an A. F. of L. petition?
A. Oh, well, I was just as conscious of that as I was of ours, although I had never seen any of theirs before.
Q. But you actually did see the association petition?
[fol. 1011] A. Sure, I signed one.
Q. Have you ever been approached prior to that, prior to May 21st by anyone to sign a petition?
A. No.
Q. Why did you decide of a sudden on May 21st to look up Ubrey and sign this petition?
A. Well, I found out during that morning that there was to be a meeting that night at the Carnegie Library. See? And up until that time, that was what eventually proved to be a dead-line for labor, as far as we were concerned, over there.
Q. I don't understand that.
A. Well, because in a few days later the strike was called,

and that was the dead-line. What I mean, we eventually reached a dead-line. See?

Q. Oh.

A. The 21st was pretty close to that time.

Q. You didn't know it at that time?

A. Oh, of course, not. But I knew there was going to be a meeting that night for the purpose of electing officers and representatives, so up until that time I never paid much attention to any talk that was going on. I heard about the A. F. of L., and I knew who their leaders were, and then I heard about the Employees Association, and I knew who their leaders were. So in my own judgment, I just felt that of the two, I would rather associate with men that I thought were at least my equal.

Q. What do you mean, associate with men that you thought were at least your equal?

A. Well, men that I would feel like associating with, men that I would like to have in my home, in my own home for one thing.

Q. And you didn't consider the A. F. of L. of such a type?

A. Not the ones that I knew as officers, no.

Q. Yes. Had you, prior to that occasion, discussed this association with any foremen or any boss?

A. No.

Q. Or asked them about it?

A. No, sir.

Q. And since you joined you have been an active member, have you?

A. Well, rather active, yes. I attend meetings and do all I can to keep up the spirit.

Q. When you joined the association and signed the peti-
[fol. 1012] tion, rather, what, in your mind, was your understanding that this association was?

A. Well, I understood that it was to be an employees association for the purpose of collective bargaining.

Q. You were satisfied, weren't you?

A. Well, I wouldn't say I was satisfied with it.

Q. You weren't satisfied with your work?

A. Oh, I was satisfied with my work, but I am not always satisfied with the money I got.

Q. You weren't dissatisfied with the money you got?

A. Yes, sometimes, sure.

Q. Sometimes you are and sometimes you are not?

A. Depending on living conditions.

Q. And that was the reason you joined the association?

A. Not exactly, no.

Q. Well, what do you mean by that?

A. Well, it was obvious that it was a nation-wide experience, that unions were forming every place, and it was obvious that sooner or later there would be a union of some kind in Heinz. There was no escape. It seems to me there was no escape.

Q. That an outside union would get in?

A. Oh, any union.

Q. Yes. Go ahead.

A. And of the two organizations that were forming, I picked the one that I thought would be the best one to belong to.

Q. Why do you think—? I mean other than this personal thing, the officers and not caring for the officers, why else did you think it was a better one to belong to?

A. Since this was an employees association, I didn't think that any officers would be elected to this organization that lived maybe in Chicago or some place like that.

I knew that all of the officers would be picked from their members, and if I wanted—had a grievance, I could go right to that man and tell him, if such a time would arise that it was necessary, and not wait until somebody from another city found time to listen to me.

Q. You were opposed to the fact that outsiders, not workers, would be involved in the outside union; is that right?

A. Well, I saw no reason why I should deal with outsiders.

[fol. 1013] Q. You opposed that sort of thing, didn't you?

A. No, I don't exactly oppose it, but between the two choices, I took the one that I thought best.

Q. Yes. Did you personally ever get anybody to sign petitions?

A. No, I didn't. When I brought the petition up that I signed, two other fellows working with me, they signed it.

Q. Did you ask them to sign it?

A. No, I didn't. I brought it up at noon, and I had it on my tool box, and I signed it, and they said, "What are your doing?" I said, "I am signing this petition." So they did likewise.

Q. Voluntarily?

A. Yes.

Q. You didn't say anything about the association to them?

A. No. They knew what it was as well as I did from the talk that was going through the factory.

Q. Other than that on that occasion, you did not get any signatures to any petitions?

A. No.

Q. From that time up until the 29th of May, the only activity you had with the association was attending meetings, and things of that sort; wasn't it?

A. Well, up until the 29th of May, I was elected a representative on the 21st.

Q. Oh, yes, you were a representator of division 15, machine-millwright departments, weren't you?

A. Yes.

Q. And you were one of the groups that went in to see Mr. Riley on the 24th of May, or aren't you?

A. Yes, yes, that is right.

Q. That was the Monday, the day of the strike?

A. Yes.

Q. Prior to that you had never been in conference with any representative of the management, had you?

A. No.

Q. And then after the 24th you, of course, had nothing more to do with the management until the 29th of May?

A. That is right.

Q. And I believe you testified about these conferences the 29th, 30th, and 31st?

A. Yes.

Q. You see no objection, do you, of having an outside [fol. 1014] lawyer to represent your association?

A. No, I don't.

Q. He is not an employee of the Heinz Company?

A. No.

Q. There is no objection to his being with you and representing you; is there?

A. No. If I knew there was any connection between a lawyer and Heinz's themselves, I doubt if I would have gone along.

Q. Yes. What I mean, you see no objection that an outside lawyer should be interested or involved in the association?

A. No, I didn't see any objection.

Q. Do you consider this letter sent out to the employees. dated June 1, which embodies the terms of what you discussed with the management, a contract, an agreement?

A. I would consider it such, yes, on the advice of our attorney.

Q. He advised the committee that it was a contract?

A. Yes, sir.

Q. And did he say it was a binding contract between the company and the association?

A. Just as legal as if there were signatures on it.

Q. Just as binding?

A. Yes, sir.

Q. Well, how long was the association bound under the terms of that contract?

A. There was no definite time stated.

Q. That contract could be done away with the next day, couldn't it?

A. No.

Q. What was to prevent it?

A. Why, it had to be a mutual agreement.

Q. Where does it provide that in the contract?

A. Well, I don't recall exactly the wording of the contract, but I know there is such a thing if it had been attempted by either body, the other party surely would have resented it.

Q. I show you a copy of the contract. Can you point out anywhere in that contract where the association is bound to live up to it or comply with its terms for any specific period of time?

A. Well, this embodies a lot of articles that we spoke on, but I don't know if this is the official contract, if this was really——

Q. Well, that is a copy, isn't it?

[fol. 1015] A. It is a copy of the articles that we agreed on, yes.

Q. What do you mean, you don't know whether it is a copy of the official contract? Was there any other contract?

A. I don't know, but I mean——

Q. You were a member of the bargaining committee that sat for two days, two and a half days in the Wm. Penn Hotel, weren't you?

A. Why, sure.

Q. Don't you know whether this is or is not the contract?
A. That embodies all the articles that we spoke of, yes.
Q. Isn't that what was issued by the company on June 1st?
A. That was mailed, yes.
Q. And did they issue anything else in writing?
A. No.
Q. Is there any other written contract or written agreement that you know of?
A. No, not that I know of.
Q. Then that is the contract that you refer to, isn't it?
A. Yes.
Q. Now, is there anything in it binding the association to its terms for any length of time?
A. No.
Q. How long is the company bound to obey these terms?
A. Just as long as we are.
Q. What?
A. Just as long as we are.
Q. And how long is that?
A. Indefinitely.
Q. Indefinitely?
A. Yes, sir.
Q. You say this contract, then, is binding indefinitely?
A. Yes, sir.
Q. Until what time?
A. Until such time as either party found necessary to reopen it.
Q. Is there anything in the contract that says that?
A. No.
Q. What?
[fol. 1016] A. No.
Q. Is there anything in the contract that binds the company indefinitely or definitely?
A. It does. They have their name on the bottom.
Q. Their name on the bottom?
A. Yes, sir.
Q. Suppose the company was operating under this contract and broke it, what would you do about it, what could you do about it under the contract?

Mr. Reed: Objected to as calling on the witness for a conclusion.

Mr. Bostwick: It is a legal opinion.

Mr. Reed: A legal conclusion.

Trial Examiner Walsh: Overruled.
Mr. Reed: Exception.

By Mr. Kleeb:

Q. What, in your opinion, could you do about it under the contract?

A. Well, I can't speak for the association.

Q. What, in your opinion, do you think *that* could be done about that broken contract under the terms of it, what, if anything, in your opinion?

A. Well, there would be another conference.

Q. Another conference?

A. Yes, sir.

Q. To straighten out why it was broken; is that it?

A. Yes.

Q. Does your organization have a strike fund, a fund for strike benefits?

A. No, sir.

Q. What, in your opinion, under the terms of that contract, could the company have done if the association did not live up to the terms?

A. They could have called a conference, too.

Q. What in that contract has the association promised to do, if anything, to the company? What has it promised the company?

A. What has the association promised the company?

Q. Yes. The company has promised vacations and raises, this and that, and another thing. What has the association promised the company in that contract, if anything?

A. Nothing.

Q. Did the association through its representatives, promise the company to do anything in return for receiving what they got listed in this letter?

A. It isn't necessary for an employee to promise. He [fol. 1017] must produce.

Q. I didn't ask you that. I said, did the representatives representing the association promise Mr. Riley and Mr. Shinabarger anything in return for this contract, which is embodied in this letter of June 1st, 1937?

A. No, sir.

Q. You promised nothing?

A. No.

Q. Didn't even sign it, did they, the association?
A. No, we didn't.
Q. Didn't sign anything, did you?
A. No, I didn't.
Q. The association didn't?
A. Well, I don't know.
Q. At these conferences?
A. I don't know whether anybody else did or not.
Q. At these conferences did the committee as representatives of the association sign anything?
A. To my knowledge, no.
Q. Did the company sign anything?
A. They have their name on the bottom.
Q. Is that a signature?
A. No.
Q. That is just a typed name, isn't it?
A. Yes, sir.
Q. Did they sign anything, to your knowledge?
A. No. On the advice of our attorney, we didn't insist on it.

Mr. Kleeb: That is all.

Redirect examination.

By Mr. Reed:

Q. Didn't Mr. McDonald tell you that if an employer published something over his signature and put it on the bulletin board, it is just as binding upon the company as if it was written? In pen and ink, or written, or done any other way?
A. That is what he told us.
Q. Yes.
A. That that name on the bottom is just as effective as if Mr. Riley and Shinabarger had put their personal signatures to it.
Q. And didn't he tell you that if any man worked under that agreement and didn't get paid what it called for, he would have a right to sue the company for it?
A. Yes.
[fol. 1018] Q. And if any man came out to work and didn't get any work and went back, he could sue for his four hours of work under that agreement just the same; couldn't he?

A. Yes, sir; our actions were governed under legal advice.

Q. And you promised just as much under that agreement as the American Federation of Labor promised under the agreement it now has; didn't you?

A. I don't know what they promised, but I think—I say there is no reason why an employee should promise. He must produce.

Q. Did you ever hear of any union getting any strike benefit?

Mr. Kleeb: Oh, I object to that.

Mr. Reed: You asked him about strike benefits.

Mr. Kleeb: I asked him if his association had strike benefits; I didn't ask him about any other union.

Mr. Reed: I am asking him if he ever heard of any member of any union drawing strike benefits.

Mr. Kleeb: I object.

The Witness: No, I never did.

Mr. Reed: That is all.

Recross-examination.

By Mr. Kleeb:

Q. Did Mr. McDonald tell you that if two days after this letter was issued the company decided to cut that 10-percent increase off they could do it?

A. No, he didn't say that, but he told——

Q. Did he tell you that the company could do that?

A. No.

Q. No. That is all I want to know.

Did he tell you, if they saw fit to cut that 10 percent you couldn't do anything about it? Did he tell you that?

A. He told us we could do something about it.

Mr. Kleeb: That is all.

(Witness excused.)

Mr. Reed: Mr. Sipple.

[fol. 1019] WILLIAM SIPPLE, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. You are *w*illiam Sipple?

A. Yes, sir.

Q. You are an employee of the H. J. Heinz Company, I believe?

A. I am.

Q. How long have you worked for the company?

A. 12 years.

Q. You are one of the bargaining committee of the Heinz Employees Association?

A. Yes, sir.

Q. Were you present with Mr. Bennett and the other members of that committee during the negotiations that followed the recognition of your association by the Heinz Company the 28th of May?

A. I was.

Q. Did you hear Mr. Bennett's testimony about those conferences?

A. I did.

Q. Was that substantially correct?

A. Yes, sir.

Q. The conferences extended over a period of three days, I believe?

A. That is right.

Q. There was a man named Hargraves mentioned in the testimony. Can you state whether or not he was at one time a member of your association?

A. He was.

Q. And did he cease to be a member?

A. He did, after the——

Q. Under what circumstances?

A. After the constitution and by-laws were adopted.

Q. He became ineligible, didn't he?

A. Yes.

Q. Why?

A. Because he was a salaried employee.

Q. How many members of your organization have you now?

A. Between 1,050 and 1,100.

Q. Paid members?

A. Paid members.

Q. You are the secretary of it?

A. Yes, sir.

[fol. 1020] Q. Was there what was called a committee of 40 in connection with those negotiations?

A. Beg your pardon?

Q. Was there what was called a committee of 20 in connection with the negotiations that you had with the management? I mean, did you have a larger committee than this five that you dealt with?

A. For the bargaining?

Q. Yes.

A. No, sir.

Q. Well, there is a list here of 15 division heads, or something like that, in this letter. Was that group called together in connection with the bargaining, the division heads, divisional representatives, they were called?

A. I believe they were called on Sunday.

Q. That is after this committee of five had been negotiating?

A. That is right.

Q. You were head of division 1?

A. That is right.

Q. That is the bottling department?

A. Yes, sir.

Q. You are not a foreman?

A. No, sir.

Q. Do you wear a foreman's uniform?

A. No, sir.

Mr. Reed: Cross-examine.

Cross-examination.

By Mr. Kleeb:

Q. You are also vice president of the association, aren't you?

A. No, sir.

Q. You hold no office?

A. Secretary.

Q. Secretary.
A. Yes, sir.
Q. And I understand you haven't received any pay as yet?
A. No, I haven't.
Q. When did you first join the association?
A. Why, about May 19th.
Q. What were the circumstances surrounding your joining?
A. Well, I just used my own knowledge of it and thought this was an organization I would like to belong to.
[fol. 1021] Q. And you signed up?
A. That is right.
Q. For whom did you sign the petition?
A. Why, I had a petition of my own.
Q. You had your own petition?
A. Yes, sir.
Q. You were one of those selected few that passed out petitions, weren't you?
A. Yes, sir.
Q. Who selected you?
A. Mr. Bennett.
Q. What did he say to you when he came to you, and where were you when he came to you?
A. Why, it was on the way to work.
And he had asked me if I would be willing to take the petition and get signers for joining the association.
Q. And you did that?
A. I did.
Q. And what is your job at the plant?
A. A group leader.
Q. In what department?
A. Bottling.
Q. You were a group leader of how many employees?
A. About four men.
Q. Five including yourself?
A. Yes, sir.
Q. What is your hourly rate?
A. 69 cents and a fraction.
Q. Do you know personally how that compares with the other four?
A. No, I do not.

Q. You don't know the rate of the other four?
A. No, sir, that is none of my business.
Q. Well, you have been instructed by the company not to discuss your wages, haven't you?
A. I was not.
Q. That is a custom there, is it not?
A. Yes, sir.

Mr. Reed: It is a custom any place, isn't it?
Mr. Kleeb: That is all.
Mr. Bostwick: That is the custom even in a lawyer's office, Mr. Kleeb.
Trial Examiner Walsh: The witness is excused.

(Witness excused.)

Mr. Reed: Mr. Zimmerman.

[fol. 1022] HARRY ZIMMERMAN, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Your name is Harry Zimmerman, is it?
A. Yes, sir.
Q. You work for the Heinz Company?
A. Yes, sir.
Q. How long have you worked for them?
A. Nine years.
Q. What is your job?
A. Car inspector and make repairs to all Heinz rolling stock.
Q. You are paid by the hour?
A. Yes, sir.
Q. Under whom do you work?
A. Well, under the traffic manager and the superintendent.
Q. That is, under Mr. Heinrich?
A. Yes, sir, and a gentleman by the name of——
Q. Jones is traffic manager?
A. Yes, sir. And a gentleman by the name of Hartshorn is the time cards.

Q. Were you a member of the bargaining committee of the association?

A. Oh, yes.

Q. You sat through those meetings from the 29th of May until the 31st, did you?

A. Yes, sir.

Q. And reached that agreement that was finally sent out?

A. Yes, sir.

Q. You heard Mr. Bennett's testimony and the testimony that succeeded him by the members of this bargaining committee?

A. Yes, sir.

Q. Did that substantially state correctly what occurred in these negotiations?

A. Yes, sir.

Q. What was the committee of 20? Did you hear that referred to?

A. Well, that committee of 20, that was 15 representatives. That takes in each group. You know, each department is numbered as a group, see, and the other five was a representative, making a total of 20.

[fol. 1023] Q. They were called in before the negotiations were concluded, were they?

A. That is at the final wind-up?

Q. Yes.

A. The 15.

Q. Yes.

A. Yes, sir.

Q. They approved it?

A. Yes, sir.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. How many years have you been at the factory?

A. Nine years.

Q. Nine?

A. Yes.

Q. And you are the representative of the association from department or division 12, consisting of the tank, box, labor, janitor, and watchman departments?

A. Yes.

Q. Right?

A. Yes, sir.

Q. Were you a member of the committee that was in to see Mr. Riley on the 24th of May?

A. Yes, sir.

Q. Were you in the group that went to see Riley on April 30th?

A. April 30th? Yes, sir.

Q. And also a member of the group that conferred with Riley and Shinabarger on May the 29th, 30th, and 31st?

A. What date is that?

Q. May 29th, 30th, and May 31st; William Penn Hotel.

A. Oh, yes, yes.

Q. What's this general round-up Mr. Reed talks about and you assent to, about the 15 division people all being called in and agreeing to your contract? When was that done?

A. That was done after midnight of the first of June; that's Decoration Day.

Q. The night of May 31st?

A. The night of May 31st and the morning of June first, we wound up.

Q. You went into the a. m. of June first?

A. Yes, sir.

[fol. 1024] Q. And how did you get these 15 representators in on the conference at that time of the morning?

A. They was in the conference all day from the time we met at 10 o'clock in the morning.

Q. So that the 15 representators and the other officers of the union or the other general grievance committee were all present all day the 31st of May?

A. Don't get me wrong, get me right.

Q. I want to get you right.

A. There were five of us went in to talk to the management, and the other 15 were in another room, and after we got our decision with the management we went and debated with them and if we thought it was O. K. we went back and told the management it was O. K.

Q. And the 15 thought it was O. K.?

A. If it was O. K. they told us it was O. K. and if it wasn't O. K. they would tell us it wasn't O. K.

Q. They did tell you it was O. K.?

A. Not on every occasion, possibly.

Q. Well,——

A. Not on every occasion, positively not.

Q. Well, in the final draft; the thing you finally agreed upon, they said it was O. K.?

A. You are talking about the final agreement?

Q. Yes.

A. Yes, sir.

Q. And you went back and told Mr. Riley and Mr. Shinabarger that everything was O. K.; right?

A. After all the agreements was signed and everything was fixed up, it was O. K.

Q. What agreement was signed?

A. What we was in negotiations for.

Q. Who signed them?

A. H. J. Heinz Company.

Q. In your presence?

A. In my presence?

Q. Did you see them sign anything?

A. After the agreements was all put in together they was signed, yes sir.

You read it in the paper.

Q. I read it? I read what in the paper?

A. That the agreement was signed and the bargaining rights was handed over to the Heinz Employees' Association.

Q. The Heinz Company told the paper an agreement was signed? Did you know that?

A. Sure, they come out the morning of the second of June, [fol. 1025] or first of June.

Q. That an agreement had been signed between the company and the association?

A. An agreement had been reached through the employees' association and the company; positively, yes.

Q. Not signed?

A. What else is it? H. J. Heinz Company. Isn't that signed?

Q. Your understanding was that an agreement between the association and the company had been signed?

A. Well, what else is it? If the H. J. Heinz Company is at the bottom of anything, isn't that signed?

Q. But it wasn't signed by the association, was it?

A. It wasn't signed by the association?

Q. The agreement wasn't signed?

A. Everything was mu*ut*ally agreed before it was signed by the company.

Q. The association didn't sign it?

A. It was mutually agreed by the 20.

Q. Why was it necessary for the company to sign it?

A. Well, just as a matter of form.

Mr. Kleeb: That's all.

Mr. Reed: That's all.

(Witness excused.)

Mr. Reed: Mr. Rooney.

BERNARD ROONEY, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Your name is Bernard Rooney, I believe?

A. Yes, sir.

Q. You are a member of the Heinz Employees Association?

A. Yes, sir.

Q. How long have you been employed at the Heinz plant?

A. A little over seven years.

Q. You were one of the bargaining committee that dealt with the management during the strike on behalf of the association?

A. Yes, sir.

Q. Were you in the conferences that began on the 30th of May and continued through the morning of June first?

[fol. 1026] A. Yes, sir.

Q. Were you present at all of them?

A. Yes, sir.

Q. I believe you weren't there the night before when they were advised of recognition?

A. No, I wasn't there.

Q. You heard the testimony of the men that preceded you, including Mr. Bennett, as to the negotiations leading up to that agreement?

A. Yes, sir.

Q. Was that substantially correct, according to your recollection?

A. Yes, sir.

Q. Anything you would want to add to that?

A. No, nothing.

Q. Did you solicit any members for the association?

A. Yes, sir.

Q. What, if any, instructions were given you as to whether or not there should be solicitation during working hours?

A. I believe—I know I was told, "Don't do it on company time", but, as there was more or less of a battle along between the A. F. of L. and the other one to get members, it was just commonly known what was being done, I mean, between the men. You could work alongside of somebody and talk to them. You have time to talk to people. I think anybody does on any job in the world, and I think it was being done on both sides. As a matter of fact, I know it was.

Q. Both were cheating a little on their rules, weren't they?

A. Yes, sir.

Q. Are you a foreman?

A. No, sir.

Q. Hourly employee?

A. Yes, sir.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. Are you a group leader?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No.

Q. Well, might you be and not know it?

A. Some people's word, if I am working with another man, and I can, maybe, be physically better than him, and [fol. 1027] I would be able to boss him, you would consider him a group leader, would he not?

Q. I am asking you.

A. All right. He may consider me and somebody else may not.

Q. What is the nature of your work?

A. Most everything. I have worked every job in the building, in the whole spaghetti building.

Q. All over the building?

A. Well, at different times, yes, sir.

Q. In various departments?

A. More or less one department. It covers, maybe, two or three different floors.

Q. What kind of work do you do?

A. Kitchen work.

Q. Kitchen work?

A. Yes, sir.

Q. That still doesn't enlighten me.

A. Maybe sometime handling vegetables, maybe other times handling fresh meats, boning ham, skinning ham, doing work like that.

Q. You are the representator of division 2, the spaghetti and macaroni departments, under this association plan, aren't you?

A. Yes, sir.

Mr. Kleeb: That's all.

Mr. Reed: That's all.

(Witness excused.)

Mr. Reed: I offer as respondent's exhibit No. 6 copy of a publication known as the "official organ" of the A. F. of L. union involved in this controversy.

Mr. Kleeb: Well, I have no objection to the offer as such, but I would like to know Mr. Reed's purpose in offering the entire magazine. What's the purpose of offering the entire sheet?

Mr. Reed: I can limit it to the articles that appear there relating to the Heinz Agreement. I don't care about the cartoon, particularly, and a few other labor facts. There is an article "Heinz Grievance Committee Acts on 25 Cases" and there is an article of agreement between the H. J. Heinz Company and Local 325 explained in brief and there is a full article of agreement between H. J. Heinz

Company and Local 325 appearing on page 3 and they are the relevant articles.

Mr. Kleeb: I have no objection to the offer. Of course, this is rather technical, but the reprint of the so-called [fol. 1028] labor-relations bulletin which appears in this document, in any way in which it may be incorrectly printed, the other one is binding.

Mr. Reed: Oh, yes, of course.

Mr. Kleeb: No objection.

Trial Examiner Walsh: It may be received.

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 6 and received in evidence.)

(Thereupon a document was marked as Respondent's Exhibit No. 7 for identification.)

Mr. Reed: I also offer what has been marked respondent's exhibit 7, being a bulletin issued by the Canning and Pickle Workers Union, Local No. 325, the purpose being to show that the meeting was called for the purpose of considering the contract.

Mr. Kleeb: Well, of course, counsel for the Board has no knowledge that that is the local's bulletin, but I assume it must be so.

Mr. Reed: If you find it is not correct, you can——

Mr. Kleeb: Of course, I have no objection to it.

Trial Examiner Walsh: It may be received.

(Thereupon the document heretofore marked as "Respondent's Exhibit No. 7" for identification was received in evidence.)

Mr. Reed: We are about to go into an entirely different phase of this case; that is, to call the executives. It will be a very long examination. If it will be agreeable to you I think it would be better to start fresh.

Trial Examiner Walsh: I think it would be much better.

Mr. Kleeb: I would like that, too.

Trial Examiner Walsh: Very well. We will adjourn until Friday, November 26th, at 10 o'clock a. m.

(Thereupon, at 4:10 p. m., Wednesday, November 24, 1937, the hearing in the above-entitled matter was adjourned [fol. 1029] until Friday, November 26, 1937, at 10 o'clock a. m.)

The hearing in the above-entitled matter was resumed, pursuant to adjournment on Wednesday, November 24, 1937, at 10 o'clock a. m.

Before J. Raymond Walsh, Trial Examiner

Appearances:

Robert H. Kleeb on behalf of the National Labor Relations Board.

Earl F. Reed, Esq., Donald W. Ebbert, Esq., and R. G. Bostwick, Esq., of the firm of Thorp, Bostwick, Reed, and Armstrong, 2812 Grant Building, Pittsburgh, Pennsylvania, on behalf of the respondent.

Proceedings

Trial Examiner Walsh: The hearings will come to order.

Mr. Reed: Mr. Riley.

H. N. Riley, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. What is your position with the Heinz Company, Mr. Riley?

A. I am a director of the company and I am in the manufacturing department.

Q. How long have you been connected with the Heinz Company?

A. Something over 25 years.

Q. Were you one of the persons in the supervisory force of the company who handled the strike and went through these negotiations leading to this agreement?

A. I was.

Q. You were familiar, I think, with all of them from the inception, were you not?

A. I believe I am, yes.

Q. Now, tell us, first, what approach was made to you, if any, by the union, we will call it, the A. F. of L. union,

regarding recognition or contracts, prior to the strike. [fol. 1030] What happened?

A. Well, I had a visit from a gentleman by the name of Call some time around the first of May, latter part of April, in there, and he didn't represent himself as coming to me from the employees. He came to have a talk with me and make my acquaintance, I believe he gave as the reason.

Q. What did he say he was?

A. He told me he was the international organizer for the butchers and meat cutters union that had had a local operating in the district with the meat-packing plants that are over on the North Side, and he said that there were a group of our employees who had approached him or, at least, his organization, petitioning for a charter, and that, I believe, he said, they had not yet granted the charter but he felt they would grant a charter.

He investigated them. He made a point they didn't take just anybody in the union, and he said he had been interested in investigating the employees and the set-up and he felt that they would be granted a charter, in which case, he said, they would probably have a committee that would probably want to contact someone in the Heinz Company for the purpose of collective bargaining, and would I be the person, or just how it would work.

And I told him I would be the person; he could probably get in touch with me 'most any time. I might not be available every day, but he could make an appointment.

Q. About when was that? Do you know?

A. That was around the first of May. He said, "Well, there are some matters to be cleared up yet" and he didn't know just when that would be. He didn't say, of course, who the employees were, and I didn't inquire, I didn't feel it was my place to inquire, particularly, who they were. The meeting was rather an informal meeting.

And he also said, though, there were some complaints he wanted to register, a complaint of some interference with the employees organizing, and I asked him if he could be at all specific and he said, "No," he said it was trouble, he thought, with the foremen.

He said he didn't have any cases in mind, it was just a general complaint.

I said, "Well, I would be glad to look into the matter, but it would help me a lot in looking into the matter if he [fol. 1031] would get me some specific instances so I could

get the parties involved and get to the bottom of things, and he left it, as I recall it, on the basis he would either visit me again or send in writing some report of the incidents he had in mind. He wasn't personally acquainted with them.

And I didn't hear further from Mr. Call. There was no follow-up of that meeting, so far as that was concerned.

Q. You never saw Mr. Call again?

A. I have seen him since, but it was after the strike and during negotiations, I believe, was the next time I saw Mr. Call.

Q. What was the next contact you had with the union?

A. The contact I had was on a Friday, May 21st. I believe they called and made an appointment by 'phone. I had a 'phone contact. I don't remember just when it was; either the day before or that morning.

Mr. Kracik and Mr. Tasker called, I believe, at about two o'clock in the afternoon. It was some time after lunch, and I didn't know either of the gentlemen. They introduced themselves as being Mr. Kracik, an international organizer, in much the same capacity as Mr. Call introduced himself as being in, and Mr. Tasker, I believe, identified himself as business manager for the union, and they told me a union had been formed and that they had a charter and that they wanted to have their committee meet with the management and discuss hours and wages and they, also, had complaints, but they did have a specific instance that was on their mind, as I recall it.

There was a certain foreman and a certain girl involved. They gave me the details of it and they complained of activities in the plant which they felt shouldn't be allowed to go on and, as they described the condition, I agreed with them. I said, "If that is the condition that is existing, why, it shouldn't go on."

As I say, they did give me one case, and they left with me a contract. I believe it was just one sheet, rather short, and covered certain demands, made certain statements, and asked if they could have a further meeting with the committee, and when, and I said, '-Any time", and I think we set that for Monday at two o'clock. It was right after lunch, some time. Following that meeting I immediately went to the factory and got in touch with Mr. Heinrich and [fol. 1032] investigated this case they complained of and it proved to be one of those cases of misunderstanding that was cleared up, I believe, to everyone's satisfaction.

The girl had misunderstood what the foreman had said, and we got the foreman and forelady and we got the girl, and I don't think there was anything ever came of that particular case. There wasn't anything there that amounted to very much, but I was impressed with the conversation, and, after Mr. Call's visit, before, I talked with Mr. Heinrich and told him I understood the employees were organizing and I said, "Now, we want to understand that the employees have a perfect right to organize and we want to be sure that the supervisory force understands they should not be interfered with in any way in organizing."

I said, "You have just simply got to let them do what they wish in that regard", and after this meeting I said, "Now, I don't know what message you have taken to the foremen but I think I would like to talk to the foremen and foreladies so there is no mistake on the stand of the management in this case."

That was Friday, the 21st, and that evening about five o'clock, at the end of the working time, we gathered the foremen and foreladies together and I talked to them, I imagine, for some 15 minutes. I tried to give them the background of this whole labor movement as I knew it, in a general way. I believe they probably knew as much as I did about it and I explained the foremen and foreladies had no place in this picture at all; they weren't to concern themselves with it, and I made it very definite.

I told them I had complaints; that I wasn't sure that they all understood it, and asked them to question me if there were any doubts in their mind as to just what parts they should play, and I believe a couple of them did get up and ask questions, just what part they should take, if the employees came and talked to them, and they were with them every day, and they explained it was hard enough to get dragged into it one way or another, and I gave them what advice I could on the matter, and I think there was a perfect understanding between us at the end of the meeting.

Q. Did you report that to Kracik or Tasker?

A. At the meeting on Monday I told them what I had done and I told them I hoped the result would be to their entire satisfaction.

They showed up on Monday at the appointed time.

[fol. 1033] Q. Did they express any satisfaction as to what you had done?

A. They indicated that was all right. I believe they thanked me for doing it. They were very decent about it. They seemed to be satisfied.

Q. Did you have any more complaints from them at any time?

A. There wasn't any opportunity for any more complaints; things developed very quickly after that. During that Monday meeting, the 24th, the committee seemed to be full of troubles of that sort. They kept expressing cases to me, and I told them I would be glad to personally investigate every case, but to investigate it I would have to have some names; that we had over 100 foremen and foreladies, and I believe I used the term "shotgun charge" against the whole group, wasn't nearly so effective as a personal charge against individuals that I could take and straighten out. I had done what I could with the group.

At the Monday meeting they wished to get down to the contract, and the very first paragraph, as I recall it, of the short contract they had presented, or whatever they termed it, I don't know the exact wording, but the tenet of it was, "As we represent a majority of the employees we wish to be recognized as the sole bargaining agent for all employees of the H. J. Heinz Company."

I said, "What evidence have you brought to substantiate that claim?" I didn't get so far with that, so I changed the phraseology. I said, "What proof have you got to convince me that you do?"

Well, they didn't seem to have evidence. They seemed to be puzzled a bit about it.

I said, "Now you get my position. As far as Kracik and Tasker are concerned, I have never seen them before Friday. They are strangers. They come in off the street and say, 'We represent the majority of the employees.' Maybe you do, but it seems to me I have some reason to ask some evidence of the statement."

Well, there was some discussion back and forth on it. They asked, "What proof do you want?"

I said, "I don't know what proof you have." I was entirely in ignorance of the whole set-up. I said, "What have you got to offer?"

It seemed to puzzle them quite a little, and we spent some time on it. I was trying to be as patient as I possibly could on the matter. I appreciate the situation. As a matter of [fol. 1034] fact, I didn't have very much experience myself.

After a while, as I recall, Mr. Kracik asked me if I could let him use a 'phone for a private conference.

I said, "Surely. You can go in the adjoining room and use the 'phone." And he came back and in a few minutes I was called to the 'phone and I found out it was Mr. Dunbar of the Labor Board, and Mr. Dunbar said, "I hear you are having trouble, labor troubles."

I said, "Mr. Dunbar, I have a committee here claiming to represent a majority of our employees, and as far as we have got is whether or not they have some evidence of the fact they do represent a majority."

Mr. Dunbar said, "What evidence will you accept?"

And I believe I said to Dunbar, "Well, I am pretty green at this game and I think you know more about it than I do. I am open to suggestion. What do you recommend I ask for?"

"Well," he says, "don't you think an election would be about the thing?"

And I says, "Well, I do. I do think that is about the only way to settle it, if there is any dispute."

"Well," he said, "let me know if I can be of any further help. I will be glad to give you any advice I can." And it was a very pleasant conversation, of course. And I went back to Kracik and I said, "Mr. Dunbar just talked to me on the phone and he suggests an election." Well, that didn't seem to go down so well. As I recall, we talked over that further.

I believe one of the girls in the committee did suggest about bringing in cards and turning them face down. "Well," I said, "I don't know." I says, "Really, turning a pack of cards face down, I don't know anything about that. You can have any kind of cards. That doesn't mean much of anything, to turn a lot of cards face down." That didn't strike me as any way to do it. And I again threw out the election, because as I understood the matter, I wasn't in position to ask an election in any way. I mean, I couldn't go to the Labor Board and ask an election. It had to come from them. It had to be voluntary on their part, some desire for the election.

Well, the meeting was interrupted a couple of times by [fol. 1035] some of the members getting out of hand and jumping up and down, of course, a little excitable, but Kracik stuck right to his knitting pretty well. And finally,

I said—he said, "Well, how much time will you give us to present some proof of evidence?"

"Well," I said, "Mr. Kracik, I am not going to put any time limit on it. Take whatever time you need. I don't know as there is any rush about it."

He says, "Well, will you give us until tomorrow?"

I says, "Surely."

And as I recall it, I think the meeting broke up on that point, and I was very definitely under the impression that they were going to go and discuss the matter and come in with a proposal the next day, whatever it might be. I don't believe we set an hour for the next day. I don't recall that we did set an hour, but that was the last I heard of the committee and Mr. Kracik at that time.

Of course, what happened is a matter of record. From what I read in the newspapers, Mr. Novak made a speech that night and said that I used a lot of big words he couldn't understand, but he thought I said "No," and struck. Well, I was quite surprised, of course, at that action.

Q. Did you have any notice that they intended to strike?

A. No, none whatever.

Q. The way it stood when the strike occurred was that they were coming back to you? Right?

A. I understood that they were to have some proof the next day to substantiate that they had a majority.

I did not indicate at that first meeting that I wasn't willing to go on and talk about anything else they had in their set-up, if they had it lying on the table, if they wanted to go beyond, but just we didn't get to it. I was willing to get to it.

Q. Well, now——

A. I explained to them, as I understood it, they could deal for half a dozen employees if they wanted to; they could deal with me for any number of employees on hours and wages and working conditions, but the statement they represented a majority was something else again. If they insisted that they were dealing for all the employees, why, of course, that needed some attention.

[fol. 1036] Q. Had you any demand from the other organization at that time?

A. Well, they had approached me sometime before. To tell you the truth, when Call came to see me and talked to me about this crowd, I had them confused. I really thought

it was some indication to me that it was the same crowd. As I look back on it, it seems rather naive, but the whole thing was just that I had no knowledge of it.

There was a group that came to me and said they were going to organize the employees and would the management meet with them. I said, "Certainly, the management will meet with you." And they indicated that they didn't want to have any trouble but, well, just to tell you the truth, I didn't pay a whole lot of attention to it. It was around the 1st of April. But they came after me again, and from the evidence I have listened to the last week, I think they knew a lot more about each other than I did. They came after me again on this same Monday and asked for a meeting, I think, Monday morning, or sent me a letter or something, Monday morning, May the 24th, the day I met with the other committee, and I told them I had a meeting. They insisted on seeing me, and I said, "Well, I have got a meeting this afternoon and I just don't know how long it will last. It may be over by 4:30 or so and if you want to see me on that basis, why, I will see you after the other meeting, whenever that is."

And they did see me, and they came in with an attorney and made the same demand that the other crowd had made, that they represented the majority. I told them that I had just a group in here that they claimed that they had a majority. And I went through the same more or less routine. I said, "What evidence have you got to support that you represent the majority?" Well, they had a petition with certain number of names on, 1383, or whatever it is, and said that that was in their mind evidence enough, and they wanted to give me the petition. I said, "I don't want the petition."

I began to see what was looming, and I said, "I don't want no names on a petition. The minute I start looking at names on a petition why, I am going to be into it up to my neck. I would rather not — the names. I don't want to know who is with who or what."

And I said, "I would like to have some other evidence." [fol. 1037] Well, by that time it looked to me, as I saw it, frankly, an election would be the only way to clear the air, because the claims were identical. They took offense at it. They put up a pretty strong argument. They were much more local than the other crowd; that is, they could all

talk and they all made speeches and stated that they had the evidence, and they felt they should have recognition.

"Well," I said, "you let me consider what you have got, but I want something more than that." And so they retired to think it over, with some future meeting, I suppose, in mind, but no date set for a future meeting with them.

Q. The strike was on then the next day?

A. The strike was on that night. The first knowledge I had of the strike, I believe, was the newspapers calling me at home. They told me that the plant was struck.

Q. Was there any manufacturing operation carried on during the strike?

A. None.

Q. Did you have any difficulty with maintenance men?

A. I understand there was some problem on maintenance men and as I understand, that was finally worked out. The maintenance men either were in the plant or a few more got in, but they had to stay in, they lived there during the strike; they weren't allowed to go in and out.

Q. Was the office building accessible?

A. The office building was accessible on Tuesday and on Wednesday, and on Thursday morning they called me—someone called me on the phone and told me that they couldn't get into the office building, and I didn't attempt to get in myself. I stayed over in the city because I had various appointments over here with the Mayor and one thing another. So I didn't see with my own eyes the condition at the office building, but it was reported to me by a number and, of course, by Mr. Anderson, who said he went over and tried to get in and didn't get in, that the office building had been included in the picket line.

Q. Now, I believe you spent the time during the strike, or a good deal of it, conferring with the Mayor and with these committees of the two different organizations? Right?

A. Yes. Yes. The strike was Monday night and I be- [fol. 1038] lieve about noon Tuesday I got a call from the Mayor's office asking me if someone from the company wouldn't come up. They wanted to see us. So I got Mr. Shinabarger to go with me. We went up and met the Mayor's secretary, Mr. Robin, who apologized for the Mayor being tied up and asked if we wouldn't wait. I believe we sat around there an hour and a half before any-

thing happened; that is, the Mayor came in and shook hands and again apologized for being tied up and being busy and asked if we wouldn't wait there, that they wanted to have a meeting, I believe, with Mr. Dunbar, and Mr. Dunbar was tied up at the moment, and just talk over things and see how the situation stood.

As I recall it, the Mayor then asked us very earnestly to avoid any trouble. And we assured the Mayor that that was the last thing in our mind, to have any trouble, that we were willing to submit to most anything rather than have trouble; we didn't want any trouble. The Mayor said, "Well, let's not have any bloody noses over there."

And I said, "I certainly don't want any bloody noses." And I said the plant was open for work but we certainly didn't endeavor to operate it; we wanted to let the situation cool off a bit. We didn't want to precipitate anything.

Eventually Mr. Dunbar came in and, as I recall, a committee of the striking workers. I don't recall who were there exactly, Frank Kracik and three or four were along. And we sat down around the table there in a conference room and tried to discuss the situation and analyze it and see where the matter stood. I recall that Mr. Dunbar, I believe, our conversation, and I said it looked to me like a place for an election if there ever was one. So I believe he put it up to Kracik and Kracik didn't say yes or no at that time. The whole afternoon was spent pretty much as this last week was spent on about arguing about straw bosses. It was really the first I had gotten into that angle of it, and it was—I wanted to get the viewpoint, and we did spend a lot of time on it.

Q. You mean to decide——

A. To decide——

Q. —who could vote in the election?

A. Well, yes. That probably was—probably that is what brought it up. I don't just recall how it got in, but I said, "Well, now"—I finally asked them—they called them foremen at the time, and I said, "Well, now, listen, how many [fol. 1039] foremen have we got in the factory?" And they said, "Well, you have got a foreman to about every four workers." Then I began to get some light on it. I had been a little puzzled before. Then I could understand it and I began to see what the trouble seemed to be.

And finally we got around to the election, and Mr. Dun-

bar explained to me, "Now," he said, "there are certain affidavits filed against this Employees Association."

And he says, "It is a rule of the Labor Board that they cannot recognize"—I believe was the word he used—"cannot recognize an association that have affi-avits or complaints filed against them until those affidavits or complaints are cleared."

And I said, "Well, let's clear them. Can't you get them cleared up?"

He laughed and he says, "Well, it will be probably August or October before the Labor Board gets around to the affidavits." He says, "We have got a lot of work to do."

I says, "Can't you make a little exception and get at this? It seems to me that it is the only stumbling block in it, with the affidavits."

Well, he didn't just feel that that could be done. He said, "We are just bogged down with work." And that seemed to be out the window.

So there was nothing very definitely came of that meeting except everybody got a chance to air their views a bit. And I began then to get an idea about this matter of employees and bosses and straw bosses and foremen, assistant foremen. And I left that meeting.

And I think that night—yes, it was that night, I found I was in hot water. There was a vigorous protest from the Heinz Employees Association about me going to the Mayor's office and negotiating with the committee of the A. F. of L. without their being present.

"Well," I said, "well, I assure you that it was innocent on my part. When I got to the Mayor's office I didn't know who was going to be there, and I frankly didn't think of the point you are making, that you are a party to this and should be present at all meetings."

So next morning about 9 o'clock, fairly early, the Mayor got ahold of me again. And he said, "I want you in my office; we are going to have a meeting."

"Well," I said, "listen, Mr. Mayor, I got in trouble with [fol. 1040] your office yesterday with a meeting," and I said, "I don't mind coming up and seeing you, but I don't want to get my neck out one way or the other here. We have got two groups here. Can't they both be there?"

"Well," he said, "well"—he made some remark about,

"I haven't got a room to hold both of them this morning here with any degree of safety."

"Well," I said, "haven't you two rooms so at least they are both on the premises? And it will relieve me of any accusation of favoring one side or being with one side and ignoring the other."

Well, in any case he says, "Come up." And of course, I went up. I was anxious to do everything we could. The plant was struck and the employees were out of work. We weren't trying to waste any time about it.

Well, I got up there, and I found the Mayor already in session with some representatives of the Heinz Employees Association. I think Mr. Kleeb was there or came in shortly afterwards. I know it was a morning meeting where Mr. Bennett and one or two of his committee—I have forgotten who they were—were there already in conversation with the Mayor. And the Mayor had figuratively his sleeves rolled up, and he was going to do business.

And I think he questioned Mr. Kleeb as to what was the matter here. He wasn't exactly familiar with the Labor Board's procedure. And I think Mr. Kleeb told him about the affidavits.

"Well," the Mayor said, "why not have an election, have an election and put one name on the ballot?" By that time he understood if there was one name on the ballot that possibly the A. F. of L. would go along, their name to be on the ballot, and either "yes" or "no."

The Mayor said, "What is wrong with that?" He said to Bennett, "What is the matter with that?"

And Bennett says, "That is no election at all."

"Well,- the Mayor says, "Why not?"

"Well," he says, "if it's 'no' then nobody is elected to represent the employees. It just means the A. F. of L. isn't, and then there is nobody."

I think the Mayor turned to me and said, "I think that would be just about what you want."

I said, "I don't agree with you, Mr. Mayor. I would like to get this thing settled. That means another election as near as I can see."

"Now," the mayor says, "that is right." He says, "If we are going to have an election, let's have an election and [fol. 1041] get it over with, and let's not drag the thing out."

And then he started to work, I believe, on Mr. Kleeb, and

I think he said to Mr. Kleeb—Mr. Kleeb said, well, he just didn't see how it could be done with both names on the ballot, under the Labor Board set-up.

And I believe the mayor said to Mr. Kleeb, "We are both lawyers, and any two lawyers know that anything can be done." And the mayor said that he had an idea that a stipulation, if a stipulation were signed that would protect the rights of the A. F. of L. so that if they lost the election they would not have given up what rights they may have had to press these affidavits, that that would be a way out of the predicament they were in.

The point, I believe, made by the Labor Board was that the minute—I may have this wrong, but this is my impression—that the minute they allowed the other name to appear on the ballot it gave them sort of an automatic exoneration from any charges. That meant they were accepted and agreed to, and that was the reason why they couldn't permit it, because they weren't in a position to exonerate them; they hadn't cleared the charges.

Well, the mayor said, asked Bennett what he thought of that. Bennett thought it was all right. And the mayor got quite enthusiastic about his proposition, and he said to Mr. Kleeb, "Now," he said, "listen," he says, "you get your men here."

I don't know what he meant by that. He says, "You get your men here this afternoon and let me tell them this proposition." And he says, "I can't see why this won't work." He says, "If the A. F. of L. wins, they have won the election and they don't care. If they lose, they still got their affidavits, too, and they are protected with their affidavits and they can press the charges."

I could see what the mayor was driving to, and I was in sympathy with him. He was driving to an election as a method to clear up the strike. Of course, the mayor wanted —he felt it was a potential bombshell over there. There was a good part of his police force on duty over there. It wasn't a very comfortable situation.

Well, we left at that moment. I think Mr. Kleeb and the mayor had an appointment after that, or got together, but I know I got called again by the mayor's office that afternoon, rather late on in the afternoon.

I went up by myself, with nobody else available to go [fol. 1042] with me at the moment. I went up and I found

in the mayor's office the A. F. of L. committee and Mr. Kleeb. It was a hot afternoon, and they had all been through quite a battle by the looks of them. They were pretty well worn out, the crowd, and the mayor says, "Now, I have sold Mr. Kracik the idea."

He says, "They are agreeable to take the proposition back to their people."

Well, Mr. Kracik said Yes, it looked all right to him, but he made the point that it would have to be voted on by the union; he said it wasn't a matter he could take the responsibility for.

And the mayor called his secretary in and drew up the proposal. He asked me if that was satisfactory, and I said it wasn't.

The proposal said that they would, I believe, sign a written contract, or do something or other with it, the side that won.

I said, "Mr. Mayor, we are not ready to obligate ourselves to that."

During the course of the afternoon I believe a Mr. Flail came into the meeting from the—mediator for the State Labor Board—and Mr. Kleeb, I think, mentioned—he said, "There is some question about this signing." The mayor didn't know about that. There was a little discussion about the signing of contracts, and he said there was some objection, probably.

So that the mayor redrafted it on a little different basis that seemed to be satisfactory. I haven't very clearly in mind just what he drafted, because the union turned it down that night and it went out the window. It was just a temporary phase. The union voted that night not to accept it.

That was, I believe, on Wednesday.

On Thursday I received a call from Mr. Dewey, who introduced himself as a representative of the Department of Labor in Washington, Federal mediator, and he wanted to know if he could see me.

And I said I would be glad to see him, and we made an appointment on Thursday morning, as I recall, at the William Penn Hotel. He came accompanied by a Mr. Mosier. Mr. Mosier is a conciliator from the State Department of Labor.

And they both expressed a desire to get into the matter and see what they could do, and I told them I was very happy to have them do it, we needed help.

They discussed the general conditions with us and got [fol. 1043] out our side, and then they said they were going to call on the other parties to it and get their viewpoint and see what could be done.

I believe that that all took place on Thursday.

On Friday morning I got another phone call from Mr. Dewey, and he said, "I think we can get somewhere." He says, "I spent all yesterday on your proposition," and he says, "I think we can get somewhere if we can get this crowd together." He says, "If we can get them where we can work with them."

"Well," I said, "what do you say we get a couple of rooms at the hotel here on the same floor, and we can put one group in one room and the other group in the other room, and go to work? Is that your idea?"

He says, "That is exactly it." He says, "If you will provide the quarters, I will see that they get there." He says, "I will be responsible for getting them there."

Q. Mr. Riley, just let me interrupt. I think you are going a little faster than we wanted to go. You are in the next week, aren't you?

A. No, I am into Friday

Q. Well, I know, that is Friday of the next week, isn't it?

A. Which week, Mr. Reed?

Q. Well, I thought you started off to tell about the night the factory was closed.

A. That is——

Q. That was Tuesday?

A. That was Tuesday.

Q. That is the 22nd? Wasn't it the 22nd, or something like that?

A. That was the 24th.

Q. The 25th?

A. The 24th. It was closed the night of the 24th. Tuesday was the 25th, that I had the meeting in the mayor's office, and Wednesday was the 26th, that I had a meeting in the mayor's office.

Q. Well, now, the mayor went away over the weekend, didn't he? You are talking about the next Thursday, when Mr. Dewey came here.

A. Oh, I guess I have. I dropped about a week there. I am sorry. Yes, I have left out the last meeting I had with the mayor.

On Friday the Mayor asked Mr. Shinabarger and myself to come up to his office, and he said that the proposal that he had hoped would be acceptable had been turned down [fol. 1044] by the union, as we already knew from the newspapers. And he said he didn't frankly know what to do next.

He said he was very much disappointed; he thought he had the answer to it. I told him I was very much disappointed, too, but this proposition he had was suitable to us. That was the Friday before Decoration Day. Decoration Day, I think, was on a Monday.

And the mayor says, "I am leaving for a holiday weekend." He says, "I probably won't be back until next week, the middle of next week some time." He says, "I am very sorry to leave this condition as it is."

He says, "I was hoping to have it pretty well cleaned up before I left town."

I says, "Mr. Mayor, are you going to do anything further?"

He says, "I don't know what I can do." He says, "Now, I only hope that there is no trouble over there." He says, "Let's protect the reputation of the city" and so on.

"Well," I says, "Mr. Mayor, as far as we are conserned, there will be no trouble. They have put us out of our factory and they have put us out of our office, and we will just let them keep shoving as long as they want to keep shoving. We are not going to cause any upset on this thing. We are going to put no effort forth to get in. I don't suppose they could keep us out if we wanted to go in, but there would probably be bloodshed before we got through."

And we were willing to submit to 'most any indignity to prevent that, if we could.

So we were faced on Friday, then, with nothing; everything had fallen through.

We discussed the matter Friday afternoon and decided some action was necessary. We had to force the thing to an issue. The issue we felt we had to force it to was an election. The management was not able to demand an election or get the election. It had to be the workers' election, so we had to reason rather indirectly to get them to submit

to an election. We summed the whole proposition up. We had two groups of employees making identical claims. One produced some evidence, the other produced none. We decided to recognize the group that produced evidence, in order to bring the thing to a head. We reached that decision, I think, Friday evening, and, as I recall, got in touch [fol. 1045] with their attorney maybe 10 o'clock, I don't know, time didn't mean much under those conditions, whether it was day or night, it didn't make much difference. We were working under strike conditions, war conditions, and working right along.

We decided to make an announcement in the paper. We drew up an announcement to go into the paper. We called up the attorney to bring whatever representatives he wanted to bring. I think he brought two men with him. We told them we were ready to negotiate with them, to bring in their demands.

Q. Meanwhile did you have any discussion relating to their petition?

A. We still didn't want to go over all the names on those petitions, for the very obvious reason, because we didn't ever want to be accused we knew who signed those petitions, and so we didn't; we wanted to be neutral on the matter.

We hit on the idea to blindly take certain signatures and check with our employment office to see if the signatures were bona fide. We appreciated they were just signatures, and we appreciated somebody—We realized the significance of a signed petition of that sort, and it was the only thing we had, and we did draw certain signatures from it and had them checked, and they looked bona fide.

Q. You did what you called test checking?

A. Test checking, yes. They were taken blindly, and I believe they submitted affidavits. They, at one of the meetings with us, said they would submit affidavits as to the authenticity of them.

I think I made the remark, "I don't know whether your signatures are all right or not."

And they agreed to submit affidavits, and I think they got affidavits from the number of the group with respect to signatures. I think they got 15 or 16 affidavits they submitted by people saying they had gotten those signatures and they were true signatures. I don't know just how the affidavit read, now.

So we told them Friday night to get their committee there Saturday and we would be willing to sit down and see what kind of a bargain we could reach with them.

Q. Had this organization indicated previously some demands that they wanted of the company?

A. It had demands. They met me on Monday with the idea of discussing demands, very much as the other crowd, [fol. 1046] but I never got to that point with them, because their first statement, they represented a majority, was the beginning and the end of the discussion.

They didn't have any demands on Friday night with them. Of course, we didn't know what they wanted, Friday night. Of course, we just called them in; it was midnight when they got there, but on Saturday morning they brought their committee there and they seemed to be prepared for action. They knew what they wanted. They had certain demands they wanted to negotiate.

Q. Do you remember the principal ones, without going through all the details?

A. Of course, the principal demand 'most always refers to wages, and they demanded a 20-percent increase in wages, and we kidded them a little bit, "I am sorry I didn't take the other crowd up because, as I recall, their demand was they wanted a 10-percent increase."

Q. They wanted time for men called out to work?

A. They wanted time for men called out to work, they wanted overtime, they wanted a 40-hour week, they wanted the right, of course, to handle grievances with the management. They had a pretty full list of demands that 'most all these contracts seemed to have, and the first meeting we had with them, I don't think lasted very long, because I told them they were out the window on their 20 percent, they had just better go back.

Well, they had to go back to a group of these—something or other, they called them representators—that were meeting over at this church on the North Side. I think there were 15 of those and five of these. They kept talking about a committee of 20, and they had no power except to go back and report and then come back.

So they went back and they came back and Saturday night was spent, Sunday was spent, Sunday night was spent, and I think I made a suggestion to them Sunday night, I said, "Listen, you get your 15 somewhere handy so we don't spend too much time running back and forth.

If we have got to have their agreement for whatever is done, get them available so we can make some progress on this matter."

A couple of points would come up and they would say, "We will go back and talk it over" and it would take a couple hours to go over and back again, so, on Decoration [fol. 1047] Day, which was Monday, we got them a big room, and they did bring 15 over there, and they sat there. I think the whole crowd was there all afternoon and evening.

Q. That was at the William Penn Hotel?

A. That was at the William Penn Hotel, and we did hammer out an agreement. I think the last thing we agreed on was vacations. They insisted on two weeks vacation under certain conditions; time of employment; and we told them we weren't adverse to it, but we felt we weren't quite ready for it yet. We were going just a little too fast. We were willing to liberalize a vacation plan and, as things went along and conditions developed, we would be glad to continue to liberalize it. So that night we reduced to writing an agreement with this group and I believe the next day a copy of this agreement was mailed to each employee. It was the only way we could contact the employees.

Q. Did the union demand a contract which they would sign? I mean, did the union demand a contract which they would sign, reading between the Heinz Company and the union?

A. Yes, their lawyer gave me quite a talk on that. He seemed to be very much incensed about not having a signed contract.

I told him we had dealt with unions before, in a small way, that we never had any signed contracts with any unions, that we always dealt on the other basis very satisfactorily.

Q. What other unions have you had?

A. We have had truck drivers, union men working for us in various cities of the country. I believe in Chicago our truck drivers are in unions 20 years or more, and we had a union up at the glass factory when we used to operate that on a pretty full basis. I had no personal knowledge of that, but I believe the glass blowers had a union, and I just don't know whether our warehousemen are in the union or not. We have always had union carpenters in the plant.

Q. At any rate, you refused to have a contract reading between the company and the association?

A. Right. We were willing to give out an agreement between us and our employees, the terms of the agreement having been negotiated by a committee for a union which we had agreed under the circumstances to accept as [fol. 1048] representing the majority of the employees and, therefore, power to negotiate for all the employees.

Q. Now, that agreement was exhibit 15. That is the letter of June first?

A. Yes, the letter. It had names on it, as I recall it.

Q. Which is already in evidence?

A. It was our announcement to all the employees of just what had transpired during the three days negotiations.

Q. Had the company had anything to do with the formation or instigation of the Heinz Employees Association?

A. Nothing whatever.

Q. Had it contributed anything to it or had anything at all to do with its formation?

A. Nothing whatever.

Q. Now, you didn't try to open the plant after you sent that announcement?

A. The plant was still strikebound. I mean, the picket line was there, and we had no more chance of operating the plant on Tuesday morning than we had the previous Tuesday morning.

Q. Did anything happen on Wednesday that occurs to you?

A. I don't believe there was anything on Wednesday. Now I come to where I jumped the track, on Thursday.

That was the day I got the 'phone call from Dewey.

Q. You can skip Thursday and Friday. We had that before.

A. I don't know whether I finished the Friday proposition.

We got the group together, and Mr. Dewey and Mr. Mosier spent time with one and with the other. We weren't very much a party to it. Once in a while I would go down and ask how things were going along, and they said, "We are working; I think we are getting somewhere."

And just about on that basis, so finally, about 7 or 8 o'clock in the evening—I know it was late; we had no dinner—he had typed a form of an agreement between the——

Q. That is exhibit 16?

A. The one we signed, yes. He typed that agreement [fol. 1049] and we went down to the one room and the president signed it, and then we went over to the other room, because the two presidents didn't seem to want to be in the same room, and we signed it.

Q. The Heinz Company had rooms on one floor and provided room, did it not, for both groups, in different places in the hotel?

A. That's right.

Q. One was the association group and the other was the Federation group?

A. That's right.

Q. And the paper was taken by Mr. Dewey from one group to the other?

A. That's right.

Q. Did the Heinz Association come down to the Heinz Company's rooms about signing the paper?

A. You mean the company representatives?

Q. Yes.

A. I think you and I and maybe Mr. Shinabarger went in to see, in both cases, whether the both of them signed it. I think I was present when Mr. Bennett signed, and I know I was present when Mr. Novak signed; because that was a pretty large group.

The mayor's secretary was in with them. Mr. Porter, of the Labor Board, was in the A. F. of L. room, and all the interested parties were more or less present.

Q. Was there any discussion there at which it was suggested the word "written" was put into the agreement?

A. Mr. Wilner talked about "written." He wanted to write that in in pen and ink, I believe.

Q. What was said about that?

A. We objected to the word "written" going in there.

Q. Was there any reason given?

A. We felt whether we wrote a contract or signed a contract was something for future negotiation. All we were agreeing to then was an election, I think they called it a consent election. I think we had agreed to it, to meet the Labor Board's requirement. We were agreeing to an election and to negotiate with whoever won the election, after they had been certified by the Labor Board.

Q. Was there any statement made by anyone in your group as to why you objected the word "written"?

A. That statement was made and it came out it was a [fol. 1050] matter of negotiation and not a matter of agreement at that time.

Q. Who made that statement?

A. You made it. The discussion was primarily a matter between you two lawyers, as I recall.

Q. Mr. Wilner testified, when he testified, that the reason was if the word "written" were put in there that that would imply that the Heinz Company had to make an agreement whether we reached terms or not.

Did you hear any such explanation ever given?

A. I don't know. I think everybody was sober. I didn't hear anything like that. We can't reach an agreement without coming to some terms. No, I don't think I heard anything like that.

Q. Do you know whether you heard anything like that?

A. No, I never heard anything like that.

Q. Following the signing of that agreement this stipulation was signed, was it not?

A. Yes, the stipulation was signed. That was a stipulation——

Q. That is exhibit 17?

A. The stipulation, I felt, was the outgrowth of the mayor's original suggestion and Mr. Dewey had accepted that as a good way around a hurdle we didn't seem to be able to get over.

Q. Mr. Porter was the one, I believe, who wanted that, or prepared it?

A. Yes, Mr. Porter agreed to it and prepared it, I believe, and discussed the reasons again. It protected the A. F. of L., in the event of the strike, that they would not be outlawed from pressing these affidavits, whatever they were. I don't know what they were.

Q. Did Dewey make any statement as to w-ether or not that was in case the Federation lost the election?

A. That was what was talked over all the time. It was on the basis that they needed protection if they got licked, because, as the mayor said, "If you win, you don't care; you have got what you want, and; if you don't win, why, this gives you protection."

Q. Following the signing an election was held?

A. Right.

Q. Did you provide the payrolls and all the data that was required?

A. Yes. We tried to cooperate as much as we could, pro- [fol. 1051] vided the payrolls and the election booths. We offered the use of our premises, but it was felt best, by the Labor Board, not to use it.

There was some discussion to use one of the buildings, and they finally had it in the fire house in the neighborhood.

Q. The factory was not in operation until after the election?

A. No, the factory was not in operation.

Q. Was there any——

A. We asked the A. F. of L., when we signed the agreement, if they would be agreeable to occupying our office building, because, really, not being in the office building, it was quite a hardship on us. You have got to realize that the Office building is the nerve center for the whole H. J. Heinz Company for the world. It's the nerve center for 25 factories, it's the nerve center for 78-some sales branches; all the records are kept there, and this strike was the strike of employees in one of our factories, in the manufacturing department, and we couldn't see any sense of embarrassing us with the carrying-on of our business all over the country because of a difference of opinion in our Pittsburgh factory. They refused, however, to go along on that. They said they wanted to keep the office closed.

Q. You did open, temporarily, offices in the Oliver Building?

A. Yes, we opened offices in the Oliver Building; we did business as best we could.

Q. I believe the Federation picketed the Oliver Building?

A. They were there a couple of days, but they didn't seem to like it so well, on the streets of Pittsburgh so well. They disappeared after a day or two.

Q. During that time until after the election was held was there any complaint on the part—at all—on the part of the Labor Board or the union, you didn't cooperate fully in the holding of the election?

A. No, I think the election was very satisfactory to everyone. We felt that the Labor Board had done a good job and Mr. Porter seemed to think everyone was very kind. It seemed to be a cooperative thing, and I was very glad it was that way.

Q. After the election and certification of the union you took up negotiations with them, I believe?

A. Yes.

Q. Since the signing of that agreement have you had any [fol. 1052] contact or conferences or interviews with the independent association or any of its officers?

A. No, the last contact I had, as I recall, was at the hotel when we signed the agreement for the election.

Q. Your negotiations have been entirely with the union that was certified at that time by the Board?

A. Entirely.

Q. I believe there was some delay in getting at the negotiations, due to your absence and Mr. Kracik's absence?

A. Well, I was there, but Mr. Kracik called me on, I believe, Thursday, and said, "Should we have a meeting Thursday or Friday. Should we have a meeting right away?" Because he had to be out of town over the week-end, he said.

I said, "Well, it looks to me like we are getting into something that will take some time, here," and I said, "if it's satisfactory to you we will let it ride until you get back," and he then indicated it wasn't satisfactory to him, that is, he just wanted to tell me he was going to be out of town and I would either have to see him then or wait until I could see him. I believe that is the interpretation he put on it, so, when he got back, he called me up, and we did have the first meeting the next week; I think that was Thursday.

Q. Was there ever any—Strike that out.

To your knowledge did the company ever instruct any foreman or superintendent to do anything to assist the independent association or the Federation, either one?

A. No; quite the reverse. All the instructions were to the contrary. They were to keep their hands off and not express any feeling in the matter.

Q. Did you investigate every complaint that was made by the outside—by the association or by the Federation, of any foreman expressing an opinion?

A. There was only one complaint made of a particular foreman. That was made Friday afternoon when Mr. Kracik and Mr. Tasker first called on me, and I immediately investigated that complaint.

Q. Has there been any complaint of any kind of any favoritism that has been brought to your attention since the election?

A. There has been no complaint of any favoritism. There was a complaint from Mr. Dodds, the Labor Board head. Mr. Dodds said he had some complaint of, I believe [fol. 1053] he said, foreman, a foreman not treating the workers who had been in the picket line just as they ought to be treated, and I said to Mr. Dodds, "Can you give me any specific instances?" And I would be glad to get into it.

He said he had them in the file, if I would wait a minute, and he sent for the file, and he did give me the name of one foreman. The complaint was he asked one fellow who had been in the picket line how his shoes were, I believe, and I said, "I suppose, Mr. Dodds, everybody probably laughed when they said it, because," I said, "I suppose it depended on whether they laughed when they said it, or not, how serious it is."

And it was the foreman, Joe, or Louie, and he was just kidding along, and said, "How are your shoes?" after he had been in the picket line; but that was the only thing ever brought to my attention of anything of that sort.

Q. Now, your negotiations with the A. F. of L. committee began within the time provided in the agreement?

A. Yes. The date of that first meeting is a matter of record here.

Q. How many meetings did you have with them, approximately?

A. I imagine we had a dozen or more meetings, all told. The meetings, of course, at the start, were very close together; practically every day or every two days, up until July the first. There was about a two-week period, then, when we worked very hard on the matter, and ironed out some of these things.

As I recall, there were certain things I just told them to forget because we couldn't go along on it. There were certain things I said we would go along on, and certain things we would go along on on a certain basis, and, of course, no matter what we started with or finished with, the discussion was wages.

Throughout the meeting the meat of 'most every meeting, the argument was on wages.

Q. You heard Mr. Wilner testify, I believe?

A. Yes.

Q. And you saw the contract he produced, which they first offered?

A. Yes.

Q. Exhibit No. —.

A. It was a very complete contract.

Q. Wait a minute. It is exhibit No. —. What was that?

[fol. 1054] Mr. Bostwick: 18.

By Mr. Reed:

Q. 18. Mr. Wilner's testimony gave me the impression that you had accepted the first paragraph of that contract and then went on to other matters. Is that true?

A. Well, no. We didn't accept that. I tell you, the first meeting we had I said, "Now, let's understand on what basis we are working."

And I think Mr. Kracik, somebody, made it clear, he said, "We have power to sign this document for the union, but, if there — any change made in this document, we must go back for the union."

That is, they didn't have carte blanche to do anything they wanted to.

I said, "You understand I represent the board of directors and anything that is done I have to refer back to my principals for approval." So we started with a very definite understanding on that.

They had the demands. We didn't have the demands, or weren't making any demands. The demands were embodied in this document which they brought. The first meeting I went over with them so that I might understand what they meant. Before I sat down to study what the demands were, I wanted to be sure I understood the demands, and I, possibly, made some comments.

We read it out, aloud, as I recall, paragraph by paragraph, and I probably said, "Boys, that's out." I mean, the meetings were informal. I didn't feel we were going to get anywhere by having too much formality about it, and I don't think anything else happened that day. I did pick up that word "successors".

I said, "Listen, you are the fellows that won the election, and we are making a deal with you, or are going to talk this deal over with you, and any deal we make with you I don't think you should bring in any successor that might come along."

They didn't make much of a point of it. I think it was just a terminology they picked up somewhere and I think I made the statement, I read it over, and, of course, Mr. Wilner presented it as a very liberal document and one which wouldn't be hard to meet, and it was quite a long document, and I said, "I think there is a lot in here which we will have to cut out, because I don't think it fits our case."

I said, "I think you have got it full of boilerplate." There was a lot of standard contract wordings in there which I [fol. 1055] think would be suitable to handle 10, 15, 20,000 men, which would complicate the basis we were setting up, but at no time did I say, "This paragraph is in" or "This paragraph is out." It was a matter of looking over what they had and beginning to work on it.

Q. I believe you did reach an agreement about the basic rates of pay and put them into effect before concluding the final agreement; is that right?

A. Yes. As I say, we kept stumbling on that, and no matter what we talked about, why, the hours would be spent on that. I tried to be as patient as I could on the thing. I discussed the matter from every angle. Mr. Shinabarger discussed the matter from every angle.

We pointed out to them how pay rates were arrived at. We pointed out to them we appreciated their situation and we wanted them to appreciate ours. We said, "When we are selling ketchup or mustard we are selling ketchup or mustard; therefore, the management's worry is, 'What does competition pay? What does the firm in Chicago or the firm in Camden, New Jersey, pay?' That's what worries us."

And I told them I appreciated it didn't worry them. What worried them was what rates of pay they got in the community in which they worked. If they did a certain kind of work and didn't get as much money for that work as a neighbor who did the same kind of work, they had reason for wanting the same kind of money.

And I said, "I am willing to offer evidence what our competitors pay." I quoted some from a list we had, and I said, "I can make a statement from this list at the present moment we are paying the highest wages in this particular industry and, therefore, the matter of raising the wages further is a serious matter with us."

I said, "You have got your proposition to sell. You produce the rates and wages in the community. That's your side of it."

Sometimes, in those meetings, I didn't know whether I was fighting my side or theirs. They were rather inarticulate; the attorney did most of the talking. I wanted to get them thinking of that; I wanted them to understand the problem. I felt if they didn't understand the problem there wouldn't be any satisfaction when the agreement was arrived at.

I said, "What do the boys get at this firm in town?"

[fol. 1056] They said a couple times they will find out. Once they checked and came back and I checked on the 'phone, and they were entirely erroneous.

I said, "You are not giving me anything to sell your proposition with."

Q. Is there a concern in your vicinity that had a contract with this union?

A. Not with this particular union. As I understand the union situation, I believe this particular union we are dealing with, I suppose you call it a subsidiary of the Butchers & Meat Cutters Union. They don't have that name, but I believe they work under them.

But I got a letter from Pat Gorman, acknowledging ownership, or belonging to his union or to his group, and I believe he called it a subsidiary, or something of that sort, but the Butchers & Meat Cutters, the parent organization, does have agreements, I think, with all the meat packers on the North Side.

Q. Do you know whether those agreements are agreements between a union and the employer or whether it is done by posting the agreement around?

A. I don't know in every case. I know in the case of the largest outfit they deal with, it is posted.

Q. What company is that?

A. Pittsburgh Provision & Packing.

Q. How far is that from you?

A. I guess a quarter of a mile; right above us.

Q. The agreement arrived at was handled in the same way there, as far as posting——

A. To my knowledge, yes. I discussed that with Mr. Kracik several times, and a couple of times he offered to give us that. He said that is all right with him. He said he would give us a packing-house agreement.

Q. I don't want to go into the details of these meetings. As I understand, Mr. McCafferty kept those.

A. Yes.

Q. You did reach your agreement, however, the wages, at some intermediate stage?

A. Yes.

I think it has been testified to on the 28th, and I think that's the correct date. At a meeting previous to that Mr. Wilner said, "We are not getting anywhere with you fellows and," he said, "I would like to talk to somebody else."

I said, "A new face in the meeting might be helpful all around; we get so tired looking at each other." I said, [fol. 1057] "You might see Mr. Anderson; he is the vice president."

And he thought that was all right, and on the June 28th meeting Mr. Anderson sat in and in the presence of Mr. Anderson we read a review of the whole matter. I imagine we spent the greater part of two hours, and Mr. Anderson is a rather quiet fellow; he just sat there and listened, and finally Mr. Wilner said to Mr. Anderson, "Can we have an expression from you? You have heard this proposition."

And Mr. Anderson said, I don't recall the exact words, and he said, "I have listened carefully to everything that was said." He said, "I don't believe there is anything brought out here that hasn't been reported to me by Mr. Riley and Mr. Shinabarger."

He said, "I can't see that there is any justification for any greater increase than 10 per cent that we have offered to you." He said, "That is our final proposal." And he further went on and said the Board had been pleased by the way Mr. Riley and Mr. Shinabarger had conducted negotiations; that the board felt every confidence in them, everything they had done at that time was entirely satisfactory.

Q. Did he say you had full authority to do whatever you wanted to in the future?

A. He never made such a statement.

Q. The wage increase finally agreed upon was then put into effect?

A. That was the 28th, and they came back to us, I think, July first, and said that they talked it over and, of course, they kept telling us, when they would get down to the point where there would be no ammunition to burn up about it,

there was no more facts, I said, "Our people won't accept it; that's why we can't accept it."

I kept bringing out, I said, "You asked for 10 per cent May 24th and 20 per cent on June 10th." I said, "Have any economic conditions arisen for the added increase?"

And they said, "We won a strike."

I said, "I know you won a strike, but that won't bring us any more money out of the consumer because you won a strike."

I said, "Whether you win strikes or not don't determine the amount of money we can pay."

He said, "Well, the indications were that you promised [fol. 1058] as much money to the people on the strike as the steel workers" and we talked about work in the steel plant and work in our factory.

There was an endless discussion about it, but on July first they came back and said they were willing, on this matter of wages, to take it to a meeting of their union that night and have them vote on whether they would accept it or not.

They left us; it was rather late, because they had to go to this meeting.

Mr. Reed: I wonder if we might have a recess.

Trial Examiner Walsh: Suppose we have a five-minute recess.

(Thereupon a recess was taken.)

Trial Examiner Walsh: The hearings will come to order.

By Mr. Reed:

Q. I understand, then, Mr. Riley, that the wages, hours, vacations section of the agreement went into effect July first.

A. Yes, they had their meeting. That was rather a crisis in the negotiations. They had the meeting with the union July first and put the proposition before the body, as I understand it.

There was a little incident happened on the afternoon before the meeting. As I say, it was late, and they had to get away for the meeting, and they felt they had the understanding of all we would offer, so they could present it. Something was said as that meeting broke up that led me to believe that they thought they were going to get a signed

contract. This matter hadn't been handled, specifically, but it had been handled back and forth by Frank Kracik in the presence of the committee.

This matter of the agreement like the packing-house had, as they called it, and it occurred to Mr. Shinabarger, after the meeting broke up, that maybe they weren't definite on that point, and I said, "If we haven't that matter straight with them send somebody up to headquarters, get them back here. We don't want any misunderstanding on that matter" because we had not agreed to sign a contract.

Q. By "signed" you mean one signed by the union?

A. Yes, that contract, both parties signing it. And we [fol. 1059] sent one or two of the men available in a car up to union headquarters to get somebody to come back. We realized that the time was short.

Well, Frank Kracik came back by himself, and I asked Frank what his understanding of it was. Well, he said neither yes or no.

And I said, "Frank"—And Mr. Shinabarger was present—I said, "Frank, we are not going to sign a contract." And I think Frank has testified at that meeting, as I remember it, he said, "It is all right by me." He said, "I will be on your neck every week."

I says, "All right, Frank, I guess you have that right."

"Well," he says, "that is all right. I don't care."

And the meeting was over very shortly. And I said, "Frank, now, we want it clearly understood before you go up there tonight." So it was understood, and I believe it was covered at the meeting, from what I read in the papers.

Q. Now, the negotiations that followed then related more to the details?

A. Well, on July 2nd we had a meeting, when they informed us that the wages had been accepted.

Q. But the subsequent meetings related more to the details of the contract?

A. Yes. We had a meeting July 2nd where it was stated the wages had been accepted, and which said they will go into effect July 1; that is, they had to go back to their unions and get that permission, and they got it and came back, and we put in the wages and the vacation plan, and the 40-hour week. And the real heart of the agreement went into effect then July 1, or—yes, as of July 1.

Mr. Wilner—Mr. Wilner voiced his disapproval of this action on the signed contract on that July 2nd meeting. He stated that he was not a party to it, and that he wanted to go on record as feeling that that wasn't right, and spoke some few minutes on the subject. Nobody else spoke on the subject. The committee were there. That is, there was no indication that anybody else of the committee felt so deeply about it. I don't think they felt one way or the other much, to be frank with you.

Q. Now, you did have subsequent meetings?

A. Yes. Now, on July 2nd, as I recall——

Q. Well, I didn't intend to go through each one.

[fol. 1060] A. I will just say how we left the July 2nd meeting. I said to Mr. Ebbert—our attorney was present, and Mr. Wilner, I says, "Now," I says, "it looks to me like you boys have got to get this thing together. We have got a lot of stuff here now, and we have got a good place in the proceedings to shape it up."

There were several points that were not in entire agreement, and there was one particularly that we had haggled over quite a little. It was the old question in the canning industry coming down to us from N. R. A. days, and that is the matter of exemptions on perishables. I don't know as it is necessary to go into the record with the detail of that. It is generally understood and admitted by the Union and by these people because I asked them. They considered the overtime pay a penalty clause. They didn't want to work overtime, as I understood it, and they felt that there should be some check on the management, some penalty, that where a management fails to plan—if the management is just careless, that the overtime will help to prevent will help to prevent such carelessness and prevent much of this overtime.

Now, in the handling of perishables, as I tried to explain to them, the management doesn't control the work. Nature provides the perishables and She provides them when She sees fit. They may come heavy today or nothing tomorrow, and may come heavy this week and nothing next week. You are running heavy, and you get a rain storm tonight, and tomorrow there is nothing. And the industry as a whole felt very deeply that they should not be penalized in the handling of perishables and cause the necessity to work overtime. That was one of the things that was left open.

Q. There was some testimony here about the meeting of July 15. Do you recall that?

A. Well, now, from July 2nd to July 15th, I believe that Mr. Ebbert and Mr. Wilner did work along getting the proposition in shape.

Q. It is the 14th, I guess, isn't it?

A. The 14th, all right.

You have got to appreciate that our packing season was coming on us and that we do have something else to do over there besides try to negotiate agreements on labor matters. And I went out of town during that period. I had to get out to attend to some matter of responsibility but, to my knowledge, they got together, because on the 14th when [fol. 1061] we met in the lawyer's office with this document and we went through it, it was in pretty good shape. I think there were six or seven pages or so, typewritten pages, but we still weren't of a mind on the perishables, and we didn't seem to get of a mind on it.

Well, the lawyers finally worked up something they thought would get us over that hurdle and put it in, and we said——

Q. That is Exhibit 20, I believe?

Trial Examiner Walsh: Here is Exhibit 20, Mr. Ebbert.

(Exhibit 20 handed to Mr. Ebbert.)

By Mr. Reed:

Q. That is right. Exhibit 20?

A. Exhibit 20.

Q. What happened when you came to leave that meeting?

A. Well, Mr. Shinabarger and I agreed that we would take it back, that as far as we were concerned, we were willing to take it back and try to put it through, that it looked all right to us. And we were all standing up with our hats on and Mr. Wilner says, "Now, you will post this tomorrow morning."

And I laughed and says, "Well, we will post it if we get it through."

And he said,—now, this was rather in a bantering way. It was late. We were trying to get away, and hungry. He says, "Well, now, you fellows got the authority to say that you will post it or you won't."

And I says, "Where do we get the authority?"

He said, "Mr. Anderson said you got the authority."

And I said, "You get Mr. Anderson to say that in a letter that he gave me that kind of authority. I have been looking for that authority a long while."

"Well," he says, "you got it."

I mean, it was just a laughing matter, back and forth down in the hall. And that is the way the matter rested. I didn't pay much attention to it at the time. I knew what my authority was. I knew what I had to do and I set about doing it.

Q. You mean, you had——

A. I had to go in and sell that proposition.

Q. What did Mr. Anderson say about that Exhibit 20?

A. Well, he took it and he read it over, and he says, "Well," he says, "I see you have agreed not to agree." [fol. 1062] I said, "What do you mean, we have agreed not to agree?"

He says, "Well," he says, "here is a statement of perishables, and you say you won't pay overtime for the handling of perishables and the Union says they won't agree to it," or something to that effect.

"Well," I said, "Mr. Anderson, that is as far as we could get on that proposition." I said—I tried to explain it to him. I says, "The whole thing is further complicated by this new State law that is going into effect in September, 44-hour bill for women and one for men going in a little later." And I said, "Really, I think I understand the Union's position on the matter. They don't want to have their hands tied and when it comes to appearing in Harrisburg before any Commission to discuss whether or not exemptions will be granted for the handling of perishables and certainly we don't want our hands tied. It is further complicated by that. The Union feels that if"——

Q. Before you pass onto that, I want to call your attention to this. Is this the paragraph that he talked about, the one that reads: "The regular schedule of working hours for watchmen, firemen, and engineers, shall not be more than 42 hours per week. Time and a half will be paid for all time in excess of 42 hours per week for the above employees, except for essential work of firemen and engineers and for the handling of perishables. The Union, however, has not agreed to this exemption."

A. That is the statement.

Q. Is that the thing he kicked about?

A. Well, he had me out there because the statement did say that they did not agree, and I was trying to tell him why we couldn't agree. I was trying to sell the proposition.

And he said, "What are you going to do with this now?"

And I said, "We are going to post it on the bulletin board."

And he says, "You are going to put all of these pages on a bulletin board?" He says, "You are going to build a lot of bulletin boards to put them on." And he started to take me right down the line on it. He says, "Do you really think that a document of this sort posted on the bulletin board is going to be intelligible to 2,000 employees?"

[fol. 1063] "Well," I said, "I don't know. They are agreeable to having this posted on the bulletin board."

"Well," he says, "I want to talk this over with some other members of the Board." He says, "This is not satisfactory to me."

Q. He made the statement, did he not, that he never heard of an agreement that said in it that the other side hadn't agreed to this?

A. Yes; he told me very definitely what he thought of me coming back with it on that basis.

Q. Well, then, you got the lawyers to working on it again?

A. Well, yes. And then there was some discussion again about this matter of how to get this to the employees. We felt that every employee would be interested in it, and there was some talk as to how to get it before them. There was some talk of printing it in a little pamphlet or a book and get it printed and mail those pamphlets to each employee. And the upshot of it was—I don't know from whom the suggestion came—that the documents should be boiled down to its essentials in plain, understandable English without too much legal phraseology, without too much of detail, and so that it could be posted on the bulletin board, stay there, and could be referred to any time by an employee by simply walking up to the bulletin board and reading it, and it had to be in that shape that he knew what it said so he could refer to it any time he wanted to, to be sure that he was getting what he thought was coming to him.

Q. When it was finally prepared in its final form, was it posted on the bulletin board?

A. It was, yes.

Q. Do you know how many copies?

A. Well, I had fifty copies mimeographed off, and I think that was something in excess of what we needed, but I believe there were 30 some odd bulletin boards on which it was posted.

Q. It is still posted on the bulletin boards?

A. It is still posted, yes.

Q. Did you promise at any time to mail it out?

A. No, I don't recall promising any time to mail this posted notice out. It was either posted or mailed, and the only reason I can think of for mailing, getting into that discussion, if we made a little book, we would have to mail that out to each one if they wanted it mailed out, and, why, we [fol. 1064] would have mailed it out. I mean, there is nothing in that.

Q. Nobody ever complained afterwards that you had not?

A. Never heard of it. Never heard of it.

Q. Until it was brought up here?

A. Until this testimony here.

Q. Now, you didn't make any point of whether the H. J. Heinz Company name appeared on the bottom or the top, did you?

A. "H. J. Heinz Company" had to be on it somewhere. It didn't matter whether it was the top or bottom. No point was ever made of that that I know of either.

Q. You don't make any point of it now?

A. No point of it now, no.

Q. There was objection to giving the detail of the union's practice about grievances, I believe?

A. There was some little discussion about grievances. The set-up of grievances as that appeared in this document was, as I understand, and I believe Mr. Wilner or somebody will agree with me, was the standard C. I. O. procedure on grievances, and I am not objecting to it in any way. I mean, it is very complete and very much in detail. I believe you have a steward who goes to the foreman, and if the foreman can't handle it, it steps right up. Well, there were—it looked like too much machinery for our outfit over there, and as it has developed since, it would have been—I mean grievances aren't being handled just like that, because the union is handling grievances with us on a much more expeditious basis. In other words, they jump over some of those preliminary steps. As I understand it now, they go right to the superintendent.

You see, our plant over there, we are all there. Mr. Heinrich is there every day and he is all around. It isn't as though you have to go to a different town or a different city, or it is a big plant over a good many square miles. We are not a small plant, yet we are far from being a big plant as these big organizations go. And the thing to do with a grievance, as we see it, is to get it adjusted just as quickly as possible. So Mr. Heinrich is willing to devote his time, any time, that they want to talk about grievances. Now, I believe he has a weekly scheduled meeting with them.

Now, the intent of this grievance procedure there was to make it, it looked like to me, so difficult for any employee to [fol. 1065] understand, that either he wouldn't take advantage of it or would have to go to the union to get his grievance adjusted and frankly we didn't feel that any employee should have to go to the union to get grievances adjusted. We would like to be able to adjust a grievance without all of that machinery, if we can. When you are managing a factory, you want it to run smoothly, and if an employee does have a grievance, the quickest way in the world for him to get that grievance fixed up, is to go to his foreman right on the spot and say, "This isn't right." And if the foreman won't make it right, of course, that is another matter.

But the grievance procedure as outlined took a good sheet in itself.

Q. That was eliminated in the final form?

A. That was eliminated in the final, yes.

Q. You have been adjusting grievances and working under this agreement, haven't you?

A. Yes. Yes, we have.

Q. Has it been workable? Have you had any difficulty?

A. Well, I think it has. I have been called in from time to time, when Mr. Heinrich and the boys don't get it settled to everybody's satisfaction, or sometimes it does happen when the boys and Mr. Heinrich do settle it, and then it doesn't suit the union, why, then they try to get ahold of me, and I think they have always succeeded in getting me the day they called me to get into the matter; and I think there has been two or three cases where we have rather reversed the original decision, or we have tried to get into the matter, tried to develop it and, so far as I know, there has been no feeling that they haven't been entirely taken care of. There may be a little difference of opinion on some of them, of course.

Q. You did agree to the insertion of the union name on the contract at their request; I believe?

A. Yes, their name is in the contract.

Q. Now, what were your reasons why you did not want to have a written agreement between the Heinz Company and the union in the form in which they first submitted a draft?

A. Well, there is some broad general reasons, and there is some very specific reasons. In the first place, I don't know as there is any great necessity for a signed contract in order to have satisfactory labor conditions. As I said [fol. 1066] before, we had dealt with—had dealt with unions without any signed contracts, and dealt very satisfactorily and are today.

Q. By "signed" you mean signed by both parties?

A. Yes.

Q. You know that by the publication by you you bind yourself just as effectively as if you had signed?

Mr. Kleeb: If the Trial Examiner please, I have been very patient with the numerous leading questions that Mr. Reed has given this witness.

Mr. Reed: I will strike that out.

By Mr. Reed:

Q. What advice did you receive from your counsel as to the effect upon you of the publication of this kind of a notice?

A. Anything we put on the bulletin board with our name on, we stand back of. That goes with or without counsel. But counsel told us we were bound by it, if we had any doubts in our minds.

Q. Now, then, when you talked about your objecting to an agreement, a signed agreement, you mean you are talking about an agreement the Heinz Company and this union were talking about somewhat in the form it was first submitted by the union?

A. What they called their contract which they brought down and submitted.

Q. What were the objections to that?

A. In the first place, I don't consider it essential. I feel that it is a point that is to be made a lot more of than there is any excuse for making. In the second place, I personally am very much opposed to the term contracts whether it be

with labor or future sale of goods or anything of that sort. We have always kept away from them. I don't feel that the calendar sets a man's wages or the calendar sets a selling price of goods. They are set by economic conditions. These conditions change from time to time, and they changed pretty rapidly the last few years, it seems to me. And I think a signed contract the nature they submitted implies a term. Now, we have always tried to meet changing conditions as rapidly as we could in the handling of our forces and we want to continue. If living costs go up, our employees have to spend more money. We appreciate that. They can't wait until next April 1st to get more money. They have to have more money now. And we can't afford the wages—on the other hand, we can't afford to wait until next April 1st to cut them down. And the same policy [fol. 1067] holds good for selling goods.

I know a lot of canners selling what they call futures, they will sell their whole pack on a fixed price for the next twelve months. We don't operate that way. We don't have this money to pay these people the wages. We don't pay their wages. The consumer pays their wages, and their wages are dictated by what the consumer will pay.

Now, of course, it passes through a number of levels, but that is what it all boils down to. We have got to find the money, and we find it from the consumer. Now, as prices go up and the consumer refuses to pay them, why, we are in a position where we can't pay the wages eventually. Now, I don't mean that that happens from one day to the next, but that is the general trend of the thing.

Why put a date on for one year or five years or ten years to a term contract? As I said before, I don't see the necessity for it.

The gentleman from Washington here, as I recall, made some such statement that weak unions operate without signed *oc*ntracts and strong unions insist and get signed contracts. And I am not an expert on these matters, and I won't set myself up to argue with the gentleman, but it has been my impression when a union is strong, they don't care whether you sign a contract or not. If they are strong enough, they don't care. They know they can get what they want without the formality of a signed contract.

Q. What use was made of the fact that the company signed a contract, if you know, among your employees?

A. Well, that is a phase of the matter that was very disappointing to me. During these negotiations, conditions, the general atmosphere wasn't good. Now, as to just how that was brought to our attention, and how you know it, you pick it up in the air. But, for instance, in the midst of these negotiations, I am called out of the bed in the middle of the night by reporters who say, "You have got a committee of your employees over here who say they are going to strike your plant in the morning, and what about it?" They say, "We want to get some news on it. What is up?"

Well, I certainly don't know of anything being up. I don't know of any reason, nor of any strike tomorrow. Well, it was probably the nervous aftermath of trouble. I appreciated that.

Then the report came in from the employees they're com- [fol. 1068] ing after us to say we have to join the union; they want the election: we have to join the union. And that necessitated a bulletin. I think it appears in evidence here, that just because the A. F. of L. won the election, they weren't under the necessity of joining the A. F. of L., as far as we were ever concerned. They were employees. They either joined or they didn't. And there was every indication throughout this that anything we were doing was misrepresented.

Q. Your company is opposed to the closed shop?

A. Absolutely.

Q. And has so announced itself?

A. And has so announced and has always been.

Q. What effect did you think it would have upon the non-union members if you entered into a contract between non-union employees—if you entered into a contract between a particular union and your company?

A. Well, I will have to just mention Mr. Wilner's name on that. I think it was highly psychological. I knew it would be misused no doubt to impress the people with the fact that they either joined the union or they didn't work for Heinz. That statement reached my ears.

Q. You had taken the same position with the independent association?

A. I had. And we have taken that position with everybody we have dealt with in this line.

Q. Did you think that the covenant of the union would be enforceable against it?

A. What?

Q. If the union had signed a covenant to work, had you any advice as to whether you would have been able to enforce that?

A. Well, I had advice. I don't know whether I needed it or not; there was enough going around. You can't force a man to work if he doesn't want to work. And as far as the signed contracts, when two parties signing and bringing industrial peace, the evidence has been practically all to the contrary the last summer.

Mr. Reed: Cross examine.

Cross-examination.

By Mr. Kleeb:

Q. Mr. Riley, you who live in the steel center here, in this community——

A. Do I live in the steel——

Q. I say, you who live in the steel center, Pittsburgh——

[fol. 1069] A. Yes.

Q. — wish to state that signed contracts in this area have not been conducive to industrial peace?

A. Well, I know of one. It is not steel, but it is closely allied and that is the coal industry.

Q. I asked you about the steel industry?

A. Well, as far as I am concerned, I don't know of any signed contracts in the steel industry until possibly very recently. I don't know that enough time has elapsed to prove anything about them.

Q. Well, then, what history of labor are you referring to where signed contracts have not been conducive to industrial peace?

A. From my understanding of the automobile industry, I understand that there are agreements that are being violated quite freely without much redress.

Q. And they have been old enough and in effect long enough for you to reach a conclusion; is that right?

A. I know what is happening, whether they have been in effect a day, a week, or a year. I know the fact that it has occurred and the signed contract does not prevent it in itself.

Q. And for that reason you reached the conclusion that signed contracts between the union and the company are not conducive to industrial peace?

A. That is one of the reasons.

Q. One of the main reasons, isn't it?

A. The coal industry is an outstanding example, in my estimation.

Q. The coal industry? You know a lot about coal?

A. Not a whole lot.

Q. You are not in the coal industry, are you? You are in the food business?

A. Just what I read in the papers.

Q. What you read in the newspapers?

A. That is right.

Q. And it is what you read in the newspapers about the automobile situation that makes you reach the conclusion you have reached?

A. That is right.

Q. So your opinion on whether or not contracts signed by unions and companies are not conducive to industrial peace is based upon the newspapers?

A. I believe they are authentic information in the newspapers.

[fol. 1070] Q. Yes, but I say it is based upon what you read in the newspapers?

A. Newspapers and magazines.

Q. Magazines?

A. General public knowledge.

Q. Employers association magazines, and things of that sort?

A. I am not familiar with them.

Q. Going back a little bit in your testimony, didn't I explain to you in the Mayor's office on the 26th of May that because the union, the A. F. of L. union objected—the reason the A. F. of L. objected to the Heinz Employees Association being on the ballot was because in the union's opinion, which it had expressed to me and to the Board here in general, that the association is a company dominated union?

A. I so understood it.

Q. I so explained that, didn't I?

A. Yes. I knew nothing about the affidavits or the specific ones.

Q. Didn't I explain that thing to you?

A. You did explain.

Q. Yes.

A. That is right.

Q. And didn't I also explain to you that there is a provision in the Wagner Act that is a union is company dominated that a person or labor union can bring charges against the company for so dominating that union?

A. I don't know whether you explained it to me or not. I understood that to be a fact.

Q. Didn't I further explain to you that if a bona fide trade union would consent to an election which was actually a company union, the name on the ballot, and the company union, that the bona fide union would be rather in a ridiculous position to subsequently bring charges against the company for dominating the union?

A. As a matter of fact, I understood that possibly they couldn't. I don't know how strong you made that statement.

Q. But I explained that that was the situation?

A. That is right.

Q. Didn't I?

A. That is right.

Q. And isn't that the reason why this stipulation, which is in evidence, was prepared and executed, so that if the [fol. 1071] Heinz Employees Association won the election, that the A. F. of L. union could still proceed to prove through the Board the charges it had made against the Heinz Company, that the association was a company union?

A. Would you mind repeating that?

(Question read as above recorded.)

A. I believe I so testified.

Q. Yes. That was that stipulation executed June 4th?

A. That is right.

Q. You didn't know, of course, and I think you so testified, who, if anybody, had given affidavits or statements to the Board to substantiate such charges; had you?

A. Nothing about the affidavit.

Q. Your company put in a general raise increase at the Pittsburgh Plant effective April 16th of this year, didn't it?

A. Well, that was one of the general raise increases we put in.

Q. Yes, there was one at the time?

A. We have put in a number since the depression.

Q. Yes. Now, since, however, the only raise increase

since that one was the one which went into effect through these so-called negotiations that you had with the union?

A. I believe that is right.

Q. Now, prior to April 16, can you fix the last raise?

A. I cannot.

Q. General raise?

A. I don't have the details of that, but I know there were several blanket raises.

Q. How many this year? That is, prior to April 16 and since January 1st?

A. I can't tell you exactly.

Q. Well, there were some, weren't there?

A. One or more, I don't know. I know there were some last year and there were some the year before. We have been trying to keep up with the general raise increase in the general tone of the economic situation.

Q. But this year is what I am interested in, particularly since the first of January?

A. I don't have that information.

Q. There were at least two general raises, were there not, since around the 1st of April of this year up to the strike?

[fol. 1072] A. From the 1st of April to the strike?

Q. Yes.

A. Two general raises?

Q. Yes.

A. I doubt that.

Q. Since the middle of March up to the strike, or between the middle of March and up to the strike?

A. Possibly that is true. I don't know when the general increases went into effect.

Q. But you will admit, will you not, there were two general raises very close together in the spring of this year?

A. How close they were together, Mr. Kleeb, I don't know. There were a number of general increases. Now, there were probably two this year, maybe three; I am not sure.

Q. Who would know that?

A. Well, that is a matter of record.

Q. I mean, would Mr. Heinrich know it; do you know?

A. I think Mr. Heinrich might, yes.

Q. You testified that you were first approached around April 1st by some representatives of the association?

A. Wasn't it April 30th I testified or around the 1st of May?

Q. I thought it was April 1st.

A. No, I believe it was around April 30th or the 1st of May.

Q. Do you recall who it was that approached you?

A. The representatives?

Q. Yes.

A. Mr. Bennett, I think Frank Kirschner, and had two or three other boys with them. I am not certain at the moment who they were. I didn't pay a whole lot of attention to the meeting at the time, but I know Bennett spoke for them.

Q. And then not again until May 24th?

A. May 24th.

Q. Now, you testified, I believe, something about Mr. Dunbar in the Mayor's office on the 25th of May saying to you it would be a long time to handle these affidavits because of the Board's work?

A. That is right.

Q. Isn't it a fact that he said to you that because of the amount of the Board's work and the number of cases it had that it would be quite a few months to have a hearing on [fol. 1073] whether or not the association was a company dominated union?

A. I meant to testify so. If I didn't, that is what I mean.

Q. It would necessitate a hearing, didn't he tell you that?

A. Right.

Q. And some time would elapse before the Board would render a decision on the evidence?

A. The intent was that it could not be cleared up in a day or two; there would be sometime necessary to clear that up.

Q. Yes, sir. And didn't Mr. Dunbar tell you that the Board had in its possession some information, which prima facie at least showed the association was a company union?

A. No. He said he had affidavits. I don't recall his discussing these affidavits to any great length.

Q. You knew that that is what he meant, didn't you?

A. Well, that is what he said. The affidavits said it was a company union; that is what the discussion was about. I don't know whether he said that the affidavits proved to him that it was or was not. I don't know whether he made up his mind that moment or not.

Q. Who suggested the securing of affidavits by the association to the effect that 1383 signatures they had were authentic?

A. I don't know who suggested it. They brought them in. They kept pressing their issue and they brought them in.

Q. Who brought them in?

A. The lawyer. He said he would furnish affidavits. We questioned him about the authenticity of the signatures, and he said he was willing to, as I recall—he was willing to get affidavits from those who had collected the signatures that they were actually the signatures of workers, and it was his idea, as I recall it, to bring in the affidavits.

Q. And were they given to you?

A. The affidavits were in my possession at one time together with this list of signatures.

[fol. 1074] Q. And the petitions were in whose possession?

A. I haven't any idea.

Q. What did you do with them?

A. I think we returned them to the Employees Association, because one thing I was trying to keep away from throughout this was finding out all of this whose names were on there, because I didn't want to know.

Q. So you think you returned them, or don't know whether you did?

A. I don't know what I did with them. There were other people helping me out, of course, in there, but to my knowledge, they were returned to the Heinz Employees Association.

Q. What about the affidavits?

A. I don't know what became of the affidavits. I don't know whether we still have them in our possession, or whether they were returned, or what eventually became of them.

Q. You don't remember right now?

A. I don't know where they are at this moment, no.

Q. But you do remember these affidavits were to the effect that the signatures on the petitions were the signatures of the people?

A. Bona fide signatures of the people.

Q. Do you recollect that the affidavits were signed by those people who had secured those signatures?

A. There were about 15 employees who had signed affidavits to that effect.

Trial Examiner Walsh: If you are departing from that petition, I would like to ask if any of the signatures that you checked were found not to be genuine.

The Witness: No, they weren't.

By Mr. Kleeb:

Q. Was every signature that was tested, so far as you could determine, authentic?

A. That's right.

Q. Do you recall when the petitions were given to you?

A. For test checking?

Q. Yes; when you first got them.

A. They had the petitions with them on Monday. I refused to take them on Monday, the 24th. I told them I wasn't interested in them at the time.

Mr. Bostwick: May?

[fol. 1075] The Witness: May 24th. I think it was probably on May 26th or 27th when—We were still in our office when Mr. McDonald again tried to get in touch with me, as I recall, so that was on the 26th, probably, and I think it was on the 26th he gave me those. I don't want to skip another week here. I am just trying to get that time fixed. I believe we were still in our office, so it would be on Wednesday, the 26th.

Q. Where were you when you got the petitions?

A. I believe they asked to see me, down at the entrance. I went down to the entrance, and I believe they handed them to me. It's my recollection they handed me this bundle of petitions in a large envelope.

Q. Who do you mean by "they"?

A. Bennett and, I think, one of his committeemen. There were two or three boys there.

Q. It was done right in the presence of the strikers?

A. Well, the strikers at that time were across the street. They hadn't moved over to our side.

Q. You testified after you were informed by Mayor Scully that he would have to leave town after May 27th, I believe it was, that on Friday, May the 28th, "We were faced with nothing."

A. That was Friday I talked to the mayor. It was Friday at noon, as I recall, he called us in. Thursday, as I recall, nothing much happened. Friday he called us in.

Q. Friday, May 28th, the mayor said he was helpless because the union turned down this proposition, and you said, "We were faced with nothing," and that night, or later, "We decided to do something about it."

A. Yes, sir.

Q. Who do you mean by "we"?

A. The board of directors.

Q. The board of directors?

A. Yes.

Q. That consists of how many?

A. I believe it was around a dozen on that, but they are not all in Pittsburgh; they are all in the business and all active, but they are not all in Pittsburgh.

Q. And who, at that time, were in Pittsburgh, and with whom you were conferring?

A There was Mr. Heinz, Mr. Anderson, Mr. McCafferty, Mr. McKillop, Mr. Shinabarger, and myself, of course. I [fol. 1076] believe that's the group that was here at the time.

Q. When you use that title, "director", you refer to a director of the board?

A. Director of the board. Our directors are all working directors, however. We don't have directors in the sense that they, commonly in these corporations where they are outside men who simply serve on the board of directors in directive affairs; every director in our company, that's his whole job, working at the plant, and, in addition, he helps direct the policies of the plant, and we call them directors.

Q. Was that the night of May 28th the directors decided to do something?

A. That afternoon when I reported from the mayor they seemed to be ended.

Q. They decided to do what?

A. We discussed the proposition of what we were faced with. It was very definite we had two groups of employees who were fighting for power. It didn't matter much what label you put on them. They were two groups that were going to control the employees. We were faced with trying to find out which one of the groups really had the power. There were a couple things to consider.

I felt, personally, that the action of the A. F. of L. group in striking in the plant as they did after my conversation with them was a very definite evidence of weakness. It looked to me like they were ducking the issue. On the other hand, the other group had been willing to produce something. We had a responsibility; we had to get that plant open; just couldn't let it stay idle while this warfare among two factions went on.

I feel certain a vast majority of the employees would rather have been back working. They wouldn't join the fracas. I know we were. So we said, "We have two parties; the one gives us nothing, the other gives us something. Let's talk to the other." We did.

Q. Wasn't the purpose of that move, as the company did, simply to force the issue and end the strike?

A. Well, we certainly wanted that strike ended.

Q. Wasn't that the purpose?

A. Well, it was ending the strike we were after, Mr. Kleeb. There is no doubt about that.

Q. And wasn't that the strategy the board of directors [fol. 1077] were working on at that time?

A. I don't know as we had any outline of strategy. It was simply a clear-cut issue of negotiating with two groups; which one should we negotiate with on the matter of ending the strike? That doesn't make it a matter of strategy, that's a matter of decision.

Q. Wasn't that decision made May the 28th because, in the mind of the directors, or in your mind, it was a way to bring the whole thing to a head and end the strike?

A. It certainly didn't mitigate against it, anyway.

Q. What was the purpose?

A. That was not the sole purpose, no. We really believed the association had a majority and acted that way. Whether that would bring the strike to an end or not, I don't know. If that was the sole purpose of it, it looks like a foolish bit of strategy; take the crowd that are not keeping you out of the plant and deal with them and ignore the crowd that is keeping you out of the plant.

It seemed if we were strategic we would try to get the crowd that was keeping us out of the plant to acquiesce to what we want.

Q. Didn't you tell me, one time, in your office, Mr. Riley, that was the purpose of that?

A. I don't know whether that was the purpose. I can say that would have that effect and was probably part of what we had in the back of our minds. As far as we were concerned, the Heinz Employees Association, that day, did have the majority.

As to what effect that would have on it, on the strike, we didn't know, because they were not the people keeping us out of the plant.

Q. You thought it was necessary to put a full-page ad in the Pittsburgh Post-Gazette to tell the entire world about it, didn't you?

A. We had the right to present our side to the world in our own words.

Q. Who decided to do that?

A. The same board of directors.

Q. The same afternoon you decided to recognize the association?

A. That's right.

Q. Who drafted that ad?

A. I don't know. I am sure we had plenty of people who can write.

Q. Granted, but don't you know who phrased it or who [fol. 1078] wrote it, who chose that language?

A. I wouldn't be surprised we had three or four people working on that.

Q. Can't you answer my question? Do you know or don't you know?

A. I do not know.

Q. Did the board of directors decide that night they were going to put in a full-page ad in the Pittsburgh Post-Gazette?

A. It was decided to put a full-page ad in the paper.

Mr. Reed: Is that a crime, Mr. Kleeb?

Q. Was it decided or wasn't it decided as to who was going to word that?

A. I don't — the mechanics of wording it had much to do with it. I will admit it was approved after somebody worded it and presented it for approval. Who wrote the words down is not what you are after is it? You want to know who approved it to go into the paper.

Q. I am asking the questions. Who presented it for approval?

A. I don't know.

Q. You don't remember that, but you were present when it was approved?

A. I believe I read it before it went to the papers.

Q. And you approved it?

A. Yes.

Q. You are not certain whether you read it or not?

A. I am certain I read that before it went to the paper. It was rather an important step, I think you will agree to that.

Q. That was read and given to the papers even before you had advised the association you had recognized it?

A. Why not.

Q. Wasn't it?

A. Certainly it was. It was a statement of what we were going to do. It wasn't a statement of what they were going to do.

Q. I refer to Board's exhibit 14, which is the ad, and on the second column, about the middle of that column, you say "After careful checking of the petitions presented to us signed by 1,383 of our employees, we are convinced that the association is the union which is chosen for more than a majority of our employees and we have therefore agreed to recognize it as the collective bargaining agency for our [fol. 1079] employees."

The careful checking is the test check of a few signatures?

A. I think about 100.

Q. About 100, plus affidavits?

A. Yes.

Q. You go on to say, "We have so advised this union." You hadn't, had you, when this was written?

A. At the time it was in print we had.

Q. At the time it was in print, but not when it was written; is that right?

A. Right.

Q. Why did you deem it necessary to call this midnight meeting or late-night meeting May 28th to tell a couple members of the association that you had decided, you had recognized them?

A. So that by the time that was printed we had notified them.

Q. That was the reason?

A. Yes.

Q. And the only reason?

A. Well, we weren't wasting any time in those days. We went and met the next morning, and then the sooner we got them to thinking about it, the better. We tried to get ahold of them by 9 or 10 o'clock, and, by the time they got themselves collected and got there, it turned out to be about midnight.

Q. The Pittsburgh plant of the H. J. Heinz Company, through its management, at the present time deals with another A. F. of L. union, doesn't it, the Teamsters?

A. That's right.

Q. That is Local 249 of the Teamsters' Union?

A. Yes; I believe that's the number.

Q. And you have a contract with that union, don't you?

A. We have a verbal agreement.

Q. Sir?

A. We have a verbal agreement.

Q. Is it for a period of time?

A. Not to my knowledge. I don't know of any period of time in that agreement.

Q. Did you negotiate it?

A. Yes, I helped.

Q. You don't know whether there is a period of time or not in it?

[fol. 1080] A. There is not, so far as I know.

Q. Have you anything in writing which embodies the terms of your agreement with the Teamsters' Union?

A. There is a memorandum in the files on that that we both agreed to.

Q. But neither signed?

A. Neither signed.

Q. You have been calling this letter or labor-relations bulletin which was posted by you after negotiations with the A. F. of L. local an agreement. What kind of an agreement do you call it?

A. It's an agreement with our employees as to what the working conditions are going to be.

Q. Do you call it a unilateral agreement or a bilateral agreement?

A. Mister, you are not going to catch me on that one.

Q. I am not trying to catch you on anything.

A. I really don't know what its terms mean, Mr. Kleeb. I know we agree, the management, to do certain things, and we set them forth.

Q. And the union, as the sole bargaining agency, agreed to do what?

A. To my knowledge, they agreed to do nothing except to agree to the agreement that's on the board.

Q. You give certain things to the employees, do you not, under the terms of that memorandum of understanding, or that bulletin?

A. Right.

Q. What consideration was passed to you from the union for those promises?

A. None that I know of.

Q. If you have a sales agreement to sell so many cans of soup a consideration for supplying the soup generally is money, is it not, from the buyer?

A. That's right.

Q. That's a sales agreement, is it not?

A. That's right.

Q. You call that an agreement, don't you?

A. Yes.

Q. Can you name me any other kind of agreement which you would call an agreement, leaving this bulletin out of the picture for a minute, binding upon both parties, that there isn't some consideration passes to each other through that agreement, the two parties to the agreement?

[fol. 1081] Mr. Reed: This question is objected to. It's two questions in one, and it is a legal question.

A man goes to work, he renders the consideration right then. That is no question to be bantering with a lay witness about. There is a consideration for the contract if the man performs under it. It seems to me this is purely a legal argument with the witness.

Mr. Kleeb: I believe that this witness has been giving his opinions on all these matters, on labor matters; I think he can give his layman's opinion as to what he knows about contracts where there is a consideration passing between both parties to the contract.

Trial Examiner Walsh: Objection overruled.

The Witness: What was the question?

(Last question read by the Reporter.)

A. If those two parties to an agreement—if there is two parties to an agreement, there is one thing. What we have got here is what we have agreed to do, and unless

you say you are agreeing to accept that agreement, that makes them a part to it, where the two parties get into it, I don't know.

By Mr. Kleeb:

Q. You don't consider, under this labor relations bulletin, that there are two parties to the agreement, do you?

A. An agreement between us and our employees.

Q. The labor relations bulletin you consider an agreement between the company and the company employees?

A. That is right.

Q. But you don't consider it an agreement between the Canning & Pickle Workers Local No. 325?

A. No; they have simply negotiated the agreement for the employees.

Q. And the agreement is between the employees and the company?

A. Right.

Q. That's your understanding of it?

A. Yes.

Trial Examiner Walsh: Recess until 1:30.

(Whereupon, at 12:30 p. m., a recess was taken until 1:30 p. m.)

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 o'clock p. m.)

Trial Examiner Walsh: The hearings will come to order.

[fol. 1082] H. N. Riley resumed the stand and testified further as follows:

By Mr. Kleeb:

Q. We were talking, Mr. Riley, at the close of this morning's session, I believe, about the full page ad of the company, which appeared in the newspapers May 29th. That ad, of course, expresses one of the definite policies of the company, that the company will not make an agreement with any union for a closed shop, "for while we recognize the rights of our employees to select their own union, we do not feel that we should force any employee to

join a union in order to hold a job with us." That says that?

A. Right.

Q. Does it not?

A. Right.

Q. Of course, that has been and is the general policy of the H. J. Heinz Company?

A. Right.

Q. And I believe you stated that it is the policy of the company not to enter into written contracts with unions which wrote their names appearing as signatories to that contract?

A. Right.

Q. That also has been and is the general policy of the H. J. Heinz Company?

A. Right.

Q. Mr. Riley, do you know in the general history of labor relations, that this kind of a thing, this kind of an ad which the company put in the newspaper is the sort of a thing which is used to break strikes and to create back-to-work movements?

A. I don't know that, no.

Q. Do you know that unions ordinarily request closed shop clauses in contracts because of a fear that if they don't have them, the employer with whom they are dealing will crush the union?

A. I don't know that.

Q. Do you know that very, very strong unions ordinarily do not request closed shop contracts? Do you know that?

A. I do not know that.

Q. Isn't it a fact that you have a closed shop understanding with the Teamsters Union?

A. It is an informal closed shop, possibly, but we are not——

Q. A what?

A. An informal agreement with them, yes.

[fol. 1083] Q. What is that informal closed shop agreement?

A. As I told the teamsters, I appreciated that, in the first place, they claimed to have all our drivers as members, and I believe they do have. And I appreciated the fact that if a fellow came around there and wasn't a member, they would probably see that he got to be a member, and that was

of no interest to me, if they wanted to do so. I was not going to go in and fight about that with them, but I wasn't going to stipulate that he shall be a member of the Union before he is hired.

Q. What is the understanding?

A. Just that.

Q. When you do hire another truck driver, is it not a fact that you inquire at the union for a truck driver?

A. No, we have never done that.

Q. But that is the understanding?

A. Well, I tell you, the possibility of most of our truck drivers come up from helpers, and the possibility of their doing so in the future was touched upon, and the union indicated that if they satisfied the union, why, they wouldn't object to putting a driver on on that basis.

Q. What do you mean if the union is satisfied?

A. That was between them and the truck driver or the youngster that was being brought in. What was inferred by that was that they would naturally sell their proposition to the truck driver.

Q. And if it wasn't satisfactory to the union, then what?

A. Well, you are crossing a lot of bridges before you come to them. As I told the union, that was their proposition. The union knew that they would take them in. That is between the truck driver and the union. They knew they would take them in, so they are not making a point of it and we are not making a point of it.

Q. Isn't it the understanding that all those who are now working or who were working at the time of this understanding reached with the union, that they shall be members of the union?

A. I don't know. I don't understand that they all shall be. The understanding is that they are. I mean that is between the truck drivers' union and the truck drivers.

Q. But you accepted the union's statement that all your truck drivers were members of the Teamsters Union?

[fol. 1084] A. We accepted that because we had reason to believe that they were.

Q. And you further agreed with the truck drivers' union that anybody else hired would be hired if the union were satisfied?

A. That is right. We agreed that the union would be satisfied that they were, otherwise they would kick.

Q. That is what you mean by being satisfied, then? That the union would be satisfied?

A. That would handle their proposition between their own members, and we weren't a party to it one way or the other.

Q. Do you wish us to understand that you have no arrangement with the Teamsters, and that if you want a new truck driver, someone who is not working for you, that you do not have to call the Teamsters about it?

A. I don't know that we have an agreement that we have to call them. The proposition works as we have worked with other truck drivers in other cities. We give them a chance to fill the vacancy.

Q. You give the union a chance to fill the vacancy?

A. Right.

Q. So that they would have to be first informed of the vacancy?

A. Possibly, yes, sure.

Q. They would have to know about it unless they knew of it if you wanted somebody else?

A. Oh, if it happens if we have a man to fill the vacancy that we want, we would suggest that he be put in the vacancy.

Q. But he wouldn't be if the union weren't satisfied?

A. If the union weren't satisfied, that is right.

Q. So that according to the company's agreement with the Teamsters Union it is, in effect, forcing the people that work, that drive trucks, to belong to the Teamsters Union, isn't it?

A. That issue hasn't been raised yet.

Q. You said under the agreement that is not settled; is that what you mean?

A. Not at all. I said that whether they are members of the truck drivers' union was a matter between them and the truck drivers' union, that we would cooperate with the truck drivers' union in filling vacancies or cooperate with the young fellows that we were bringing along, but it was [fol. 1085] between the truck drivers' union and that particular person whether he was a member of the truck drivers' union.

Q. That is your distinction for a closed shop and an indirect closed shop?

A. Well, just depends on whether they can sell their proposition to the fellow or not. He certainly has a right

to join the association. He certainly has a right to become a union man, and, I say, it is between them; it is not between us and them.

Q. Is it not a fact that during your personal negotiations with the Canning and Pickle Workers local representatives that you said very specifically that under no circumstances would the Heinz Company have a closed shop or anything like a closed shop, or in any way prefer the union over any other organization, or have any preferential agreement of any kind?

A. That statement was and we still maintain that we shall not force a man into a union.

Q. And didn't you tell the Canning and Pickle Workers Local you would have no preferential shop?

A. Right.

Q. So you told them you wouldn't even have an indirect closed shop, didn't you?

A. That is right.

Q. But you do have one with another union?

A. If you so construe it.

Q. You call it that.

A. You put the words in the phrase. I never thought of an indirect closed shop. Those were no words of mine.

Q. In your testimony in answer to my questions you have never called it an indirect closed shop?

A. Well, I say, you put the words in my mouth.

Q. I put the words "indirect closed shop" in your mouth; is that what you mean to say?

A. That is right.

Q. You testified, I believe—if you didn't, correct me—that because the board of directors had petitions upon which were, according to affidavits, 1383 signatures for the Heinz Employees Association, that the board of directors decided that the association had shown its strength and that it represented a majority and, therefore, you concluded that you were going to recognize them? Right?

A. Right.

Q. That was on May 28th, I believe, or thereabouts that that conclusion was reached?

[fol. 1086] A. I think that is the right date, yes.

Q. Now, the proof of that number of signatures in the hands of the directors was 100 test checks or 100 signatures checked at random and checked against signatures you probably had on other records; is that right?

A. Right.

Q. Plus affidavits signed by 16 people, allegedly those who had secured those signatures; right?

A. Right.

Q. That was the basis for your conclusion?

A. Plus the 1,383 signatures.

Q. Which you said you didn't read?

A. The names——

Q. Or look at.

A. The names were there. It makes no difference, they were there.

Q. They weren't counted, were they?

A. I don't recall whether they were actually counted or not, but they were there.

Q. You testified you didn't check——

A. That's right, because we didn't want the identity disclosed.

Q. Yes, and the identity would be disclosed if you counted them?

A. You can count items, can't you, without reading through the item?

Q. Do you want us to understand there was such a count made?

A. I do not know of any such count being made, no.

Q. But if it was made you want us to understand it was made by just counting them and at reading them?

A. Right.

Q. How do you explain the fact that a few days before your factory had been shut down by a strike of an A. F. of L. union, yet you weren't willing to accept that as proof of sufficient strength of the A. F. of L. union?

A. I can't follow you on that.

Q. I am asking you, how do you explain it?

A. 100, by the use of force, can curb 1,000 men who don't care to use force.

Q. I didn't ask you that. How do you explain the fact that you, the board of directors, would not accept that show of strength as sufficient to warrant them in recognizing the A. F. of L. local?

A. We didn't consider it then and we don't consider it now as any proof whatever.

[fol. 1087] Q. Why didn't you then and why don't you now consider it as proof?

A. In the first place, it is not a proof of numbers whether they can close a factory or not. In the second place, they could close that factory with none of our employees, if they so desired, by bringing in outside sympathizers. There is no proof of number of employees by a mob on the street. And then you wouldn't have access to your property.

Q. That's the reason?

A. That's the reason. I don't see how you could consider it proof in any sense of the word.

Q. How do you explain the fact that a few days after you had recognized the association, based on the proof you had that approximately 500 or more of those signatories to that petition, in secret ballot, voted for the A. F. of L. local?

A. Well, that's a matter of clever electioneering. The story I got, there were a lot of associations brought into that that broadened the field. I think a lot of people voted for President Roosevelt for President because that was the President's wish, to vote that way. A lot voted for the Liberty League, as I know. A lot voted for Social Justice, for priests in the picket line. The thing got into a big- wide basis, and what changed the minds of the signatories I don't know, Mr. Kleeb.

Q. But you do admit there was a change?

A. Yes, I admitted and accepted it.

Q. You don't deny that those people who voted had an opportunity, in secret, to cast their ballot as they saw fit?

A. Never denied that.

Q. They all did have a free choice?

A. They all had a free choice and accepted it.

Q. How often was the board of directors meeting during this time?

A. During this strike?

Q. Yes.

A. Rather continuously, I would say.

Q. That is, down here at the Oliver Building headquarters?

A. Well, we had headquarters at the William Penn Hotel where some of us stayed day and night, and we had meetings at lunch.

There were a few of us, of course, that were always available, and there were others who came in during the day [fol. 1088] to discuss the situation.

Q. Was there always a quorum present when any formal action was taken?

A. I don't believe there was any formal action taken. As I said before, we were in the midst of a war, and you just don't go through all the niceties and formalities, but the directors who were in the city and available were there, and, as I recall it, they were a quorum.

Q. They voted a quorum?

A. As I recall it, they were a quorum.

Q. And after the strike and resumption of production, how many meetings were the board of directors holding, after you started negotiating with the A. F. of L.?

A. Well, board of directors meet twice a week, always.

Q. As a regular, scheduled matter?

A. As a regular, scheduled matter.

Q. And you followed that practice after the plant reopened?

A. That's right.

Q. Mr. Riley, you just stated a little while ago, admitted that the general policy of the company was against—the policy of the company was against entering into a written contract with unions with both signing?

A. Right.

Q. How do you account for the fact that on June 4th at the William Penn Hotel in the presence of Wilner and others, through your counsel, took the position that an agreement, written or not, or signed or not, was a matter of negotiation, when you knew that the policy of the company at that time was against written contracts?

A. Well, the negotiations brought a change of policy. It's possible, isn't it?

Q. That's the explanation you wish to offer?

A. Certainly. Policies are subject to change from time to time. I am not saying at this moment we never signed a contract. I will say our policy, at present, is not to.

Q. Did you tell anybody on June 4th the policy of the Heinz Company had been and was at that time—that the policy of the company was opposed to signed, written trade contracts?

A. I did not; nobody asked me.

[fol. 1089] Q. You didn't tell anybody?

A. No.

Q. You didn't tell anybody at any of the meetings with the A. F. of L. until that time you told Frank Kracik?

A. Frank Kracik and I discussed at that meeting——

Q. Anyone else, I mean.

A. They were all there.

Q. What?

A. I say they were all there. The committee was there when Frank Kracik offered a packing-house contract, as he called it, or a packing-house proposition. We discussed that type of agreement several times before——

Q. No, you misunderstand. You had many conferences, from the time of the election up until the July 2nd meeting, didn't you?

A. That's right.

Q. Did you at any time tell the grievance committee or the negotiating committee of the A. F. of L. local that the definite policy of the H. J. Heinz Company was not sign written trade agreements with trade unions?

A. I don't recall making that statement in those words, no.

Q. Yet you knew all the time, at all those conferences, that that was the policy of the company, didn't you?

A. Right.

Q. How do you account for the fact that all of a sudden you decided you had better call somebody back, after that July first conference, to expressly tell them at that time that the policy of the company was against signed, written trade agreements?

A. I think I covered that in my testimony, Mr. Kleeb, if you recall it. We were under the impression that we were open on that subject.

Q. What do you mean by that?

A. That it was a matter still yet to be argued about. There was no definite decision on it. There was something said at that meeting, as we went out. I don't know whether I caught it or Shinabarger caught it, at that meeting, which made me feel that Wilner or somebody expected a signed contract.

The boys were going to their union meeting that night, which they considered a critical meeting. "Either take the wage proposal or not"; and we didn't want any misappre- [fol. 1090] hension on their part when they submitted this to the union. It was an after thought, when that point came up. We took the only action we could take. We sent a car up to union headquarters and we brought back Frank, we

happened to get Frank; because we didn't want any misapprehension or misunderstanding on that point. We felt it was an important point for them to consider in their meeting. I understand it was so considered, at their meeting.

Q. When you told Kracik this evening, July first, was anybody else present?

A. Mr. Shinabarger.

Q. Between the election and this time you told Frank Kracik about the policy of the company on signed contracts, had you or Mr. Shinabarger or anyone else, to your knowledge, raised the question before the board of directors or any meeting of the board of directors?

A. I don't know of a specific meeting it was raised, but I know the policy was in force, I knew what it was. I don't recall the meeting it was formelly voted on, if that's what you want to know. It isn't a recent policy; it's an old one.

Q. How long has it been in effect?

A. To my knowledge, as long as they have been operating. I don't know.

Q. Mr. Riley, prior to this time, prior to this year, the Heinz Company never had any labor—anything to do with labor unions, at the Pittsburgh plant, had it?

A. We have had dealings with the union carpenters right along, yes.

Q. And this policy was given to the officials of the company through formal action some years go; is that right?

A. It may have been. It's a policy established in the company. I don't know the source or origin of it.

Q. These many meetings of the board of directors during the strike and these meetings since the strike are held regularly twice a month——

A. Twice a week.

Q. Once a week?

A. Twice a week.

Q. Your company, of course, keeps minutes of those meetings?

A. If formal action is taken, minutes are kept; yes.

Q. And you kept minutes of meetings during the strike, didn't you?

[fol. 1091] A. I don't believe we had a formal meeting of the board of directors during the strike.

Q. Can you say definitely whether you did or didn't?

A. I didn't attend any.

Q. You didn't attend any formal meeting of the board of directors?

A. That's right.

Q. Did you receive any official notice of any formal meetings during the strike?

A. I did not.

Q. You do receive notice of formal meetings, don't you?

A. I don't know as anybody sends me a special invitation to these meetings, Mr. Kleeb. I receive informal ones.

Q. In other words, you did receive notice of some kind there was going to be a formal meeting, if one was going to be held, didn't you?

A. Not necessarily. They have had meetings the last two weeks and I haven't had notice of meetings and I haven't been there.

Q. And the only reason you weren't there was because you were at this hearing?

A. And that's the case during the strike. If there were, I was busy elsewhere.

Q. But, to your knowledge, there was no formal meeting of the board of directors during the strike?

A. No.

Q. Do you know if there is in existence any written minutes of meetings that took place during the strike?

A. I don't know of any. There was a considerable disruption in our routine under those conditions.

Q. Are there any minutes of board of directors since the strike, relating to labor unions or labor policies or labor relations?

A. Not to my knowledge, Mr. Kleeb.

Q. Are the minutes of the board of directors available?

A. You will have to ask the secretary for them. I haven't got them.

Q. Who is the secretary?

A. Mr. E. D. McCafferty.

Q. Is he in the courtroom?

A. He is not.

Q. Of course, those minutes, if they are in writing, and all minutes are in writing, are kept at the Pittsburgh office, [fol. 1092] Pittsburgh administration office, over there on the North Side?

A. Right.

Q. All the papers of the company are kept there?

A. I don't know whether all are kept there.

Q. But the minutes are kept there?

A. I imagine the minutes are all there, Mr. Kleeb, yes.

Q. Mr. Riley, will you at this time notify the—call the plant of the company and have the—have all the written minutes of the directors' meetings during the strike and since the strike produced?

Mr. Reed: That is objected to; not a proper question; calling on the witness to do a thing he is not required to do; and a legal question.

If he wants the minutes, let him ask for them by a subpena.

Mr. Kleeb: Will Mr. Reed produce them?

Mr. Reed: I will not, sir. You ask for them in a subpena, the same as I have to ask for my papers; to show why they are needed.

Mr. Kleeb: Excuse me a minute, please.

(Slight pause.)

By Mr. Kleeb:

Q. Mr. Riley, you are a director by virtue of what, appointment or election?

A. By virtue of election.

Q. All directors are not stockholders, are they?

A. I don't know of any who are not.

Q. All directors are stockholders?

A. Yes.

Q. Isn't it a fact that a good number of the directors hold only enough stock to qualify them to be directors?

Mr. Reed: Objected to as incompetent and immaterial. It doesn't make any difference how they get to be directors or how much they hold.

Mr. Kleeb: I think it is material to show in whom the authority is vested to speak for this company and what full respect of authority Mr. Riley has as director.

Mr. Reed: A man has the same authority if he is a director whether he holds one share or 20 shares or 100 shares.

Trial Examiner Walsh: There is nothing in the exhibits on this at all?

Mr. Kleeb: No, sir.

[fol. 1093] Trial Examiner Walsh: Overruled. You may ask the question.

Mr. Reed: Exception.

(Question read as above recorded.)

A. I have no knowledge of any amount of stock necessary to qualify a man to be a director. I don't know as it is necessary for a man to have any stock to be a director.

Trial Examiner Walsh: Excuse me. I didn't hear that.

The Witness: I say I don't know as it is necessary for a man to have any stock in the Heinz Company to be a director. I really don't know.

By Mr. Kleeb:

Q. It is a fact that the company is a closed corporation, isn't it?

Mr. Reed: This is objected to. The question is meaningless. Nobody knows what a closed corporation is, and it is not competent or relevant, anyway.

Trial Examiner Walsh: Sustained.

By Mr. Kleeb:

Q. It is a fact, is it not, that the control of this corporation is vested through stock ownership in a very few people?

A. To my knowledge, yes.

Q. The stock is not on any public stock exchange, is it?

A. No, sir.

Q. Do you know who the stockholders are?

A. Well, I don't know as I could give you a list. I believe there is probably 100 or so that hold stock of one kind or another or who have interest in the company.

Q. That is the common stock you are referring to?

A. I believe that is all there is.

Q. The capital stock?

A. The capital stock.

Q. Yes. And you, yourself, own some of that capital stock?

A. Right.

Q. You have been a stockholder, an owner of common stock how long?

Mr. Reed: Objected to as incompetent and immaterial. The stock ownership of this company has nothing to do with it. It is not proper cross-examination.

Trial Examiner Walsh: Mr. Kleeb, can you expand on what your intentions are as to this line of inquiry?

[fol. 1094] Mr. Kleeb: Well, if the Trial Examiner please, I intended to show that the control of the company really rests in one person, and that Mr. Riley and Mr. Shinabarger are merely employees and at no time, although they purported spoke for the company, were able to speak anything but policies of the company which were controlled by certain few or one man, and I think that the stock ownership is important to show that. Mr. Riley has spoken of "we" and "I" and "my opinion" and "what I thought" and so forth, and I merely wanted to show that Mr. Riley couldn't have much to do with changing the policy anyway.

Mr. Reed: None of that is material. The corporation is a defendant. The corporation functions in a certain way, and the fact that stock might be owned by a few people doesn't affect the action of the corporation at all. We are not trying the stock ownership of this company here; we are trying certain corporate actions that were carried on by the directors as corporate actions are always carried on.

Trial Examiner Walsh: The stock is not listed, I believe he said.

The Witness: It is not listed.

Trial Examiner Walsh: I overrule the objection with the hope, Mr. Kleeb, that you can get some light on this inquiry rather soon. I have some doubt, in other words, as to the relevancy, so to speak, to your case.

Mr. Reed: Exception.

By Mr. Kleeb:

Q. My question, I believe, was how long have you been an owner of common stock?

A. I just don't know the date. I think it is 1921 or '22.

Q. You were also an owner of common stock in 1927?

A. Yes, it has been continuous since that time.

Q. Continuous since 1921?

A. Yes; I don't know the 1921 date. It was around that time.

Mr. Kleeb: If the Trial Examiner please, I would like to offer in evidence a certified copy of the certificate of incorporation of the H. J. Heinz Company, copies of letters

patent issued thereon, and also proceedings held relative to the increase of the capital stock and indebtedness, copies of the articles of amendment to the articles of incorporation [fol. 1095] of the company, and the treasurer's return relative to the increase of capital stock, the purpose primarily being to show that in 1927 wherein the company listed the owners of its capital stock, at which time there were 200,000 shares at $100 par, that Mr. Riley's name does not appear as the owner of any of the shares in 1927 contrary to his testimony.

Mr. Reed: This is objected to as imcompetent, immaterial, and not cross examination. In the first place, those who are listed as the owners does not prove the ownership of stock. In the second place, what was the situation ten years ago is an entirely irrelevant matter, and it has no place in this hearing at all. If he asked the witness a question about a situation ten years ago which is totally irrelevant, then it is not competent to contradict him on it.

Mr. Kleeb: Well, I think it is competent to contradict the witness. The photostat shows that the undersigned stockholders of the company waived certain notice required by law for a meeting to increase the capitalization of the company, and it lists those stockholders and there are—oh, I forget how many there are here, twenty or so stockholders, and the number of shares owned by each listed opposite their names. Now, the statement of the company—of the stockholders say, "We, the stockholders of the company" and at the same time when this witness says he owned stock, he is not listed as a stockholder of the company, and he says he was. I think it is material to show that——

Mr. Reed: You don't have the right to contradict a witness on any immaterial matter however remote.

Mr. Kleeb: Of course, that is a question of whether or not it is material.

Mr. Reed: Well, the question is material if his ownership of stock in 1927 is material to this case. Now, do you say it is?

Mr. Kleeb: No. I say that this is material because this witness apparently did—whether he did or did not own it is material to show whether he is telling the truth.

Mr. Reed: You would never end a lawsuit if you were permitted to contradict a man about a matter ten years ago. That is immaterial to the case.

Trial Examiner Walsh: What is this a photostatic copy, so far as the stock ownership is concerned in '27?

[fol. 1096] Mr. Bostwick: Waiver of notice of meeting. Waiver of notice of meeting.

Trial Examiner Walsh: Waiver of notice of meeting?

Mr. Kleeb: Yes, meeting of stockholders.

Mr. Trial Examiner——

Mr. Bostwick: That is going pretty far.

Mr. Kleeb: This witness has given his opinion in his statement, in answer to questions, directly and indirectly attacked the credibility of the previous witnesses, and I think it is material that his credibility be attacked.

Trial Examiner Walsh: Mr. Kleeb, may I ask you to tell me once more the materiality of this evidence, not as to the credibility of the witness, but the materiality of the evidence to the case?

Mr. Kleeb: Well, basically, as I said before, I wanted to show, in the first place, the corporate set-up of this organization, and to show in whom authority was vested, to show that it was a corporation which was closely knit together, called a closed corporation, and I, frankly, didn't know that this man, this witness was a stockholder, and I wanted to show that he, himself, although a director, really has no ownership in the company, and that he is being dictated to by those who do own the company, and that he in no way can testify here about what he could do or could not do, because he claims he was not given the authority. And yet in his own testimony, he states all that he could do or could not do and what the company would or would not do, which I think contradicts the witness.

Trial Examiner Walsh: This, I take it, is the most recent public document in regard to the stock ownership, is it?

Mr. Kleeb: Yes, it is the most recent, because it is my understanding that at this increase of the capitalization from $25,000,000 to $30,000,000 was the last increase, that is, the capital stock increase.

Trial Examiner Walsh: I can tell you frankly——

Mr. Reed: May I say this? If it were material in this case to show the corporate structure, it should have been shown as a part of Mr. Kleeb's case, not on cross examination of the witness, and it should be shown today and not as existed ten years ago, which doesn't prove anything at all. So that the only theory upon which this can be

[fol. 1097] offered at all is to contradict this witness on an immaterial matter of what he owned ten years ago. That isn't the real point. I am frank to say the real purpose that Mr. Kleeb wants this in here is to yell that the Heinz family controls the corporation. Of course, they do. If he wants to yell about rich families controlling corporations, let him yell. He doesn't need all of that corporate picture to do it with.

Trial Examiner Walsh: The objection to the evidence is sustained. I do not mean to conclude by that your pursuit of this line of inquiry, however. The objection is sustained to the introduction of this particular evidence.

Mr. Kleeb: If the Trial Examiner please, I would like to say this for the record, that counsel for the Board was in no way trying to show that a rich family or a poor family or any other kind of a family controlled this company. It makes no difference to counsel for the Board who controls this company, so far as the innuendo of Mr. Reed is concerned, of what I was trying to show. It matters not to me.

By Mr. Kleeb:

Q. Mr. Riley, on June 1 there was mailed a letter embodying, in substance, what has been agreed upon between the association and the representatives of the company?

A. Right.

Q. You remember that?

A. Right.

Mr. Bostwick: '37.

Mr. Kleeb: 1937, yes. Thank you.

By Mr. Kleeb:

Q. What did you or what do you now or then consider that to be? What would you call that sort of thing?

A. Announcement to the employees of an action taken affecting them.

Q. Do you call that an agreement?

A. An agreement with the employees. We set our name to that and said, "Here is what we are going to do."

Q. You consider that a like document as that which is now posted with reference to what was talked about between the A. F. of L. and the company?

A. Very similar.

Q. In other words, you place them both in the same category?

A. Right.

Q. And in that letter you stated in substance that you [fol. 1098] had negotiated with the Heinz Employees Association, and "here are the things that we promise" or some such thing; is that right?

A. Right.

Q. Why is it in the final draft of that which you posted on your bulletin boards after negotiations with the A. F. of L., you would not say, "We have negotiated with the Canning and Pickle Workers Local 325, and here is what we get"?

A. Well, there is a very definite difference between the two bodies. In the one case we were recognizing an association. We took the action. That is the only position they had. In the other proposition, we were dealing with a body that had been certified by the Labor Board, which put them in quite a different category. It was common knowledge. They had been certified as a matter of record. It had been in the newspapers. The employees knew it was the bargaining agency. In one we were telling them something, in the other case there was no news to tell them.

Q. I don't understand that. Who cares about the news value of that? Why were you interested in giving out news?

A. We had to tell our employees what had been going on.

Q. You don't think they knew it?

A. Why, certainly, they did not. What position were they in to know it?

Q. You mean to say your employees after the election did not know who won?

A. I am talking about the letter to the employees of June 1, which was before the election.

Q. Well, that was news?

A. That was news.

Q. And the policy was posted, that was posted August 15th and was distinguished from the news letter?

A. What is what? It was an agreement.

Q. It was an agreement?

A. We posted an agreement between ourselves and our employees, and as far as the details of that it had been talked over in meetings, had been talked over among the

employees, had been several weeks in the making. The agency had been certified by the Labor Board, no need of us to tell the world who they were. The world knew.

Q. Wasn't the letter of June 1st an agreement?

A. Right.

[fol. 1099] Q. But it was an agreement and news?

A. Right.

Q. But August 15, the Labor Relations bulletin, it was no news, just an agreement?

A. No news as to who were doing the bargaining. Everybody knew who was doing the bargaining.

Q. What was the objection to putting the name of the union in the first paragraph of that draft that was finally posted August 15th?

A. I am sure I don't know, Mr. Kleeb.

Q. Well, from whom——

A. I am sure I don't know.

Q. From whom did the objection emanate?

A. It seemed to be an argument as to what paragraph it should go in, and I don't know yet what difference it would make, whether it is one paragraph or another.

Q. Well, now, Mr. Riley, there was objection to that going in at all, wasn't there?

A. I wasn't a party to that.

Q. Who was?

A. Mr. Wilner can tell you part of it. He testified to it. It was between Mr. Wilner and the attorneys.

Q. You personally know of no objection of anybody superior to you to having the name of the union in that?

A. I testified this morning, when we got to the end of the road on this, I was in and out quite a little. Now, I lost track of quite a little, I will admit, frankly. I had other things to do. It was turned over to the attorneys and they w-angled it out.

Q. Weren't you present in these conferences a few days prior to August 15 when the cutting out of that name was discussed? I think it was August 11 when that very objection on the part of the union was raised?

A. August 11?

Q. Yes.

A. Well, frankly, my conception of it is that it got down, as Mr. Wilner said, it got down to a pyschological affair. We were aggravated; we were annoyed by the ac-

tions of the A. F. of L. in misinterpreting any moves; they were misusing whatever they could get. And if there is any reason, I believe that was the sole reason, that they wanted to flaunt that. It was, as Mr. Wilner said, entirely psychological, and how to weigh those values, I am sure I don't know.

Q. Is that the reason given by you?

A. I don't believe I gave any reason. I don't think [fol. 1100] I was ever a party to the argument or discussion of that with Mr. Wilner or the committee.

Q. You don't know whether any reason or not was given to the union that their name was not included?

A. I believe that conversation took place when I wasn't present.

Q. But you wish us to understand that that was the only reason for leaving out their name?

Mr. Reed: Their name was not left out. I don't understand that.

By Mr. Kleeb:

Q. In the first paragraph?

A. The psychological reason; is that what you asked me to testify to? What I said, or what part of it? What do you want me to?

Q. You said that the reason for leaving it out was because you or the company—I don't know about whom you were speaking—was set up or burned up or distressed or some such thing with the misrepresentation of the union.

A. That had a lot to do with it, Mr. Kleeb.

Q. How do you know that if you——

A. No, you do know—I do know that that had a lot to do with deciding to cut out the name. You mean how do I know? How do I know what? What I testified to was—I will tell you what is my idea of, why, there was a tendency to get this wild colt back on the reservation.

Q. What wild colt?

A. This A. F. of L. union.

Q. And what was the company doing to get this colt back on the reservation?

A. Trying to keep them from having information that they could misuse and misrepresent us with.

Q. And what were the exact tactics or things done by the company to get this colt back on the reservation?

A. Well, the way you usually break a colt is not to give them everything they want.

Q. And one of the things you wouldn't give them that they wanted was their name in the first paragraph of the Labor Relations Bulletin?

A. Yes; we said, "We will put that in the fourth paragraph" or whatever it was.

Q. But that wasn't even in the Labor Relations Bulletin, the one that was presented right before the final draft?

A. Well, it was in it as it went on the board.

Q. Oh, yes. That was put in upon the insistence of Mr. [fol. 1101] Wilner, wasn't it?

A. All right. He got it in, didn't he?

Q. In the last paragraph.

A. He got it in.

Q. The last paragraph.

A. I don't know whether it is the last paragraph or the next to the last paragraph or what it is.

Q. Now, Mr. Riley, I would like you to list the many or various misrepresentations that this union made that caused the company and you as a representative to be so disturbed and concerned. What were these misrepresentations?

A. Well, now, they didn't come to me directly, you understand.

Q. Well, name the ones that came directly or indirectly. Which ones came directly?

A. They were careful not to make anything to me directly.

Q. You got these misrepresentations indirectly?

A. Right.

Q. Now, what were they?

A. Principally, as I testified, that no employee could work for the Heinz Company unless they belonged to the pickle and canning workers union. They very definitely made a drive on that phase of it. Their constant turmoil, as I said this morning, of going to the newspapers about the strike. I didn't feel that such talk was at all conducive to amicable relations. And, frankly, I have not felt as kindly toward this organization as I should because of the very shabby way they treated me at their first meeting. Now, a man—fool you once; that is your misfortune; but if he fooled you twice, that is your fault.

Q. That was the way you felt about it ever since they won the election?

A. This crowd have yet to establish full confidence, as far as I am concerned. I think they will probably work to it.

Q. Full confidence in you?

A. My full confidence in them.

Q. You don't have confidence in them at the present time? You haven't had, have you?

A. Not as fully as I would like to have. I think they can establish it.

Q. Did their counsel ever make any misrepresentations to you?

A. He is smarter counsel than that.

[fol. 1102] Q. He never did?

A. He never did.

Q. Let us take this Labor Relations bulletin that you have now posted and which you posted August 15th. Do you consider yourself bound legally in any way by that?

A. I certainly do.

Q. For how long?

A. As long as it is in force.

Q. How long is it in force?

A. It is in force until it is changed.

Q. By the company?

A. By the company.

Q. And the company alone can change it?

A. It can alone change it.

Q. So that the terms of that agreement, as you recall it, are binding on the company only so long as the company wishes to be bound; is that right?

A. That is right. It is not a term agreement.

Q. That is right, isn't it?

A. That is right.

Q. Do you consider the employees bound in any way by that contract?

A. Not in the least.

Q. Not in any way?

A. No.

Q. Under the very language of that agreement, as you call it, any day, any time the company can change any term that it wishes, can it not?

A. Well, I presume they have under the terms of that

agreement that power. That isn't the way we operate, of course, but that is——

Q. Well, I am asking you what you could do under this so-called agreement?

A. I presume it could, yes.

Q. Were you advised by legal counsel whether the employees had any rights, any legal rights, if you should change your mind the next day or the day after you had agreed to it?

A. I don't believe I have had any such advise from legal counsel, no.

Q. I believe you testified that you were advised by legal counsel that you were bound under that agreement?

A. To carry it out, that is right.

Q. Bound to carry it out?

A. That is right.

[fol. 1103] Q. But you were advised only so long as you willed it, were you not?

A. Well, I don't know. That is evident on the face of it.

Q. Were you so advised?

A. I don't believe they advised us of that, no.

Q. You expressed reasons why you were opposed to term agreements, didn't you?

A. Right.

Q. Were you expressing your personal opinion or the opinion of the H. J. Heinz Company?

A. I expressed my personal opinion.

Q. So that in all your answers to Mr. Reed's questions as to the objection to a closed shop, the objection to a term agreement, objection to a written, signed agreement, et cetera—they were your own personal opinions, were they?

A. Well, you have got a rather all inclusive question there, Mr. Kleeb.

Q. Well, you break it down, then, as to what is correct.

A. I am afraid I can't do that. In my opinion—My opinion, of course, is colored by the company policy.

Q. Your opinion on all these matters?

A. I don't know whether I have heard any of these at the formal board of directors' meetings on term contracts or any minutes to that effect in the records or anything of that sort—I am just telling you how I feel about a term contract.

Q. Have you heard anything in the formal board of directors' meetings about signed written agreements?

A. No.

Q. The only thing about labor you have heard in these formal contracts with reference to agreements was no open-shop or no closed-shop contract?

A. No closed-shop.

Q. That's all?

A. That's all.

Q. If that's the case, how do you know it is the general policy of the H. J. Heinz Company that they are opposed to a signed contract?

A. I don't know if it is a general policy. It's a general policy at the time I make that statement. I can check up with my superiors and find that out. As I said before, I am not saying that's the policy from now on and forevermore. [fol. 1104] Q. When did you know it, up to the time you posted this labor-relations bulletin? How did you know it was the policy?

A. I asked.

Q. You asked your superiors?

A. Right.

Q. Who is that?

A. Board of directors, vice presidents, presidents.

Q. And you were informed that the company was opposed to signed, written contracts?

A. They were opposed to it, yes.

Q. But you had not asked about that up until the strike or up until after the election, which?

A. I asked them. I don't know whether I asked before or not, Mr. Kleeb.

Q. You asked when?

A. After the strike. In the negotiating that was one of the things I discussed. However, I could go——

Q. That was after the A. F. of L. won the election?

A. It came up when we were dealing with the employees association, I believe, very definitely, because they insisted on a signed agreement, and it was discussed then, and the answer was "No" at that time.

Q. You recall no other time prior thereto you discussed a signed or a not-signed contract with your superiors?

A. I don't believe I was ever in a position to bring the question up.

Q. So that prior to this strike the only definite policy of this company that you knew about was that it was opposed to a closed-shop contract; is that right?

A. That is right.

Q. So that, to again revert to the question I asked you previously, your testimony here as to your opinion on contracts, signed contracts and things of that sort, are, in part, your personal opinions and in part policies—opinions expressing policy of the H. J. Heinz Company?

A. I believe that's correct.

Q. I believe you testified, also, that one of the objections to putting the grievance procedure and such things in this labor-relations bulletin was because of its length?

A. Well, its length and complexity, and it didn't fit the case. There was reference in the agreement, as I recall it, that we would do whatever the union wanted to do. I don't know the exact words, but they were to set up how they [fol. 1105] wanted to handle grievances and we were to handle it that way. They have set up a way to handle grievances, and it has not worked, and it is not practical, because it is too stiff and rigid.

Q. It's important to all employees, is it not, to know what the grievance procedure is?

A. I think they should know, and it is in the statement where they should go with the grievances to get help.

Q. Isn't it the fact, basically, that the reason you cut the bulletin down to a few pages was a psychological reason?

A. The bulletin was cut down to one page and posted as one sheet. It was a little longer than a letter page, and we had to paste something on the bottom of it to make one sheet. It is very definite, and it sets forth in a way he can read it in three or four minutes and understand it exactly in the manner in which it should be.

Q. It was a psychological reason you wanted it brief and concise?

A. Nothing psychological about that. I think it was a very practical reason. You understand, we have a lot of employees of varying intelligence, and our sole reason on this announcement was that it would be an announcement that would mean something to the employees and that they could understand, and we trimmed out the verbiage, we trimmed out the legalistic phrases, we tried to make it sharp and to the point, of the points agreed upon.

Q. It is a fact, is it not, that one of the important reasons for leaving out the A. F. of L. local's name in the first paragraph of that bulletin was psychological?

A. Now Mr. Kleeb, I don't know whether you understand just our position or not.

Q. Well, was it or was it not?

A. Our position——

Q. Was it or was it not psychological to leave that name out?

A. Yes.

Q. It was a psychological reason?

A. Yes.

Mr. Reed: Now you can make any explanation you want.

The Witness: I want you to get this point of the problem [fol. 1106] we are faced with.

By Mr. Kleeb:

Q. What is that problem?

A. We have two groups of employees that are fairly evenly divided. Now we are just trying to be the neutral body between those groups of employees; we are the referee in the prize ring, and every once in a while one of them swings on us.

That's the unfortunate part about it, but, as I say, our position, we have got two groups of employees; one a minority, yes; a rather large minority. Their rights should be protected. I think the rights of the minority should always be protected.

If they don't want to do certain things the majority do, up to a certain point, I think they should have some liberty to act, some freedom from it. Whether you call one C. I. O. and the other A. F. of L. or whether you call one the A. F. of L. and the other an independent, the tag means nothing; the tag means nothing. One group could just as well be C. I. O. and the other A. F. of L., and yet the fact remains the same.

We have that condition, as I see in the papers, confronting us in many places. So, as the management, we try to see that everybody gets a break, and what it will finally develop into none of us know, but we have got to keep that place together, we have got to keep it operating, we have got to produce goods, and this matter is entirely and utterly, we agree, made entirely and utterly for the employees. It's the age-old struggle for power, whether it be between nations or anyone else.

One person sets themselves up to lead and you automatically, almost, have got another person sets themselves up to lead. It's inconvenient for us, but that's the situation, and I don't know what we can do about it.

Q. Tell me why, after leaving out the express name of the A. F. of L. local, you protect the rights of the minority which you are so anxious to protect?

A. Because of the statements of the majority, the statements they were making, which had come to our ears and which necessitated our putting out bulletins and which necessitated our trying to get the thing quieted down. I am frank in saying I don't care who represents the employees, as long as they are happy and content.

Q. Why did the leaving-out of the name and putting-in, instead, "that agency which has been certified by the Labor [fol. 1107] Board," the words you used, protect the right of the minority?

A. As I told you.

Q. Why?

A. As far as I am concerned, it was a very small matter. I quite agree there is no great weight, one way or the other, as long as the name is in there. It was just a matter of trying to pound some of the boys down a little bit. It's human nature. I don't know whether we can pin it down with thumb tacks or not, and dissect it.

Q. In other words, did you mean, by naming the union in the first paragraph, it would create the impression to the minority you were favoring or preferring the A. F. of L.? Is that what you are meaning to say?

A. Well, it wasn't a question of that, in an intelligent way, because it wasn't up to us whether we preferred them or not. They were elected by the employees. It wasn't up to us to say whether we preferred them or not.

But it was true that the A. F. of L. insisted at that time and have since indicated, and I believe you yourself made this statement to me not so long ago, "When the one side wins the other side ought to quit," and maybe they should. I don't know. It's up to them to decide, not me.

They can't misuse me to make them quit. If they don't want to join, I can't be interested in that, and it's that background that accounts for this that is going on. If you are dealing with an organization, probably 95 per cent of its employees, that is one thing; but here you have a situation that doesn't lend itself to that.

I tell you, as has been testified here, and as you men who sat through the testimony observed for yourselves, there is a situation of antagonistic feeling that will take time and takes handling to get it eradicated one way or the other.

Q. Mr. Riley, I still would like to get your meaning, the psychological meaning that you referred to, for keeping the name of the A. F. of L. union out of the first paragraph. Did you consider that the minority might think that you were preferring the A. F. of L. if you named it in that agreement or did you not think of that?

A. Well, the minority knew they were preferring them. That is, they knew they weren't dealing with us.

[fol. 1108] Q. Then, again, I can't see whether it was your decision or the board of directors' decision why, when the first draft of this unilateral, or this Labor Relations bulletin as it has been called, was drawn and the various drafts thereafter all had the Canning and Pickle Workers Local Union 325 specifically named in it as the party negotiating with the management; up until the last moment when it was absolutely necessary according to the company, to delete that name. Why, is what I want to know? Why was it necessary? Do you know the reason, or don't you?

A. I have given you the only reasons I have. The actions of this group, the atmosphere they created, they could have had a lot more than they got if they conducted themselves in the right way to get it and that still holds true. We are in, you might say psychology, whatever words you want to use for it, whether I took it out or I didn't take it out. I testified I had nothing to do with that name in the first paragraph and I say I don't care personally whether it is there; it doesn't seem to me to be a matter to make an issue out of. Frankly, that's my opinion.

Q. The decision was made by the board of directors?

A. It evidently was. It didn't pass through my hands. I wasn't a party to that part of it.

Q. And were you, as a member of the board of directors, were you never given the reasons for deleting that name?

A. I was never given, that I remember, the reason for it, no. I was out of town that part of the year and I don't know what went on.

Q. Were you not told by Howard Heinz or his representatives that he objected to the name——

A. I understand there was an objection to it. Whether

it came from Howard Heinz or the board of directors, I don't know.

Q. And did you know that the reason Howard Heinz gave was because it was too long and he wanted brevity?

A. I don't know as I ever heard that, Mr. Kleeb, exactly phrased that way. I know we wanted brevity on the document. That was the reason for cutting it from six pages down to one we would post. I quite agree with that.

Q. You don't agree that the reason for cutting out the name of the Canning and Pickle Workers Local Union No. [fol. 1109] 325 was for brevity's sake?

A. Not that particular point in it; no. I don't know whether that was the reason given. Brevity was the reason for cutting the whole thing down.

Q. By the way, is the H. J. Heinz Company a member of the National Association of Manufacturers?

Mr. Reed: Objected to as incompetent and immaterial. We are not trying an association of manufacturers.

Mr. Kleeb: It seems to me, if the Trial Examiner please, that due to previous evidence, testimony of the position of employers associations, how they act, the employers act through associations in various policies and the attitude of associations and the particular evidence on this very employers association I name that it is material whether this company, this respondent, is a member of the National Association of Manufacturers or any other employers association.

Trial Examiner Walsh: Objection overruled.

A. What was the question, please?

Q. Is the H. J. Heinz Company a member or any of its officials, officially members of the National Association of Manufacturers?

A. I don't know as they are. That probably could be ascertained as a matter of record. I can only say I, myself, have never seen any of those association's publications you mentioned. I know of the association. I heard of them when I was on N. R. A. work. I never met any of the men or discussed any of their policies with them. During the N. R. A. I had no contact with them so if we are a member, I don't know whether it is any more than a dues-paying proposition, or not. They have had no influence on my way of thinking, and I don't get their literature.

Q. Do you or do you not know?

A. I told you I do not know. As a matter of record, you could ascertain somewhere else.

Q. You personally do not know whether the company or any official representative of the company is a member of the National Association of Manufacturers?

A. I do not know.

Q. Do you know whether the company or any official representative of it are members of any other employers associations?

[fol. 1110] A. We are not members of associations. You can just take that to start with. We are not association minded, if I can use that word. There is a group, the industrial relations conference board that I know Mr. Heinz has been active in.

Trial Examiner Walsh: I didn't understand the name.

The Witness: The National Industrial Relations Conference Board.

Trial Examiner Walsh: Industrial Relations Conference Board?

The Witness: Yes. I, personally, have no contact with them. I know they got out a voluminous amount of data, statistical data.

Trial Examiner Walsh: Research information?

The Witness: Yes.

A. Mr. Heinz was active in that and served as chairman of it. I do not know of any other organization. We may belong to an advertising association. I believe they have quite a large association, the national advertisers, but beyond that I don't believe we have any association——

Q. This is the first time in the history of the Pittsburgh Plant of the H. J. Heinz Company that the plant, through its representatives, has been dealing with an organized labor union, is it not?

A. That's right. That is, with the exception of carpenters and incidental things.

Q. I mean, the rank and file worker, the general employees?

A. That's right.

Q. And the company has been, the plant has been in existence, for about 69 years?

A. That's right.

Q. Since the strike and the election and the recognition—strike that.

Since resumption of operation has the company established any kind of a school for the foremen and foreladies and supervisory officials on labor relations and labor unions?

A. No, we haven't, Mr. Kleeb.

Q. To your knowledge, has anybody representing the company lectured or in any way instructed the foremen and foreladies on labor unions and labor relations?

[fol. 1111] A. Yes. Immediately after the strike Mr. Heinz, himself, wanted to be sure peace and harmony be restored as quickly as possible and he gave them a good length lecture on the whole proposition of broad-mindedness. He felt there would be little grudges, naturally, that might be held. He tried to get them to forego any of that and pointed out the whole proposition. He said the strike was a most unfortunate occurrence but the best thing to do was to forget it, if they could. He talked to them. I believe Mr. Heinz talked to them, but as to any formal school where they study labor relations, there was nothing of that sort.

Q. As a matter of general principle, don't you, as an individual, think it is important for foremen and foreladies who, for the first time in years are being confronted with something, new negotiations with a labor union and the union representatives, that those foremen and foreladies ought to be broadened in their employee-employer approach?

Mr. Reed: This is objected to as not cross examination. He is asking for an opinion about a matter that is not relevant. There is no evidence of any discrimination of any kind after the strike.

Trial Examiner Walsh: Sustained. We will recess for ten minutes.

Mr. Kleeb: I am through. That's all I wish to ask the witness.

Trial Examiner Walsh: All right. You may be called back to the stand for redirect examination. Mr Riley.

(Thereupon, a short recess was had.)

Trial Examiner Walsh: The hearings will come to order.

Redirect examination.

By Mr. Reed:

Q. Mr. Riley, you testified to an agreement with the truck drivers. Was that agreement subsequent to these negotiations in this agreement or prior?

A. They were running along at the same time, so I am just a little hazy as to just when there was an agreement. I think it was——

Q. At the time this ad was published, you had no agreement with the truck drivers?

A. No, it was prior to August 15th. I would say some-[fol. 1112] where around the 1st of August.

Q. How many truck drivers do you have?

A. I think there was 14 or 15 involved and I believe they have helpers that are members of the union. It may run the number up to 30 people, altogether, that the union has.

Q. In your testimony about the election you said some voted for Roosevelt and against the Liberty League; what did you refer to, there?

A. Maybe I was getting careless in my talk, but I was trying to bring out the point the main issue involved was more or less lost sight of and I can see where a lot of people might change their mind in the period that elapsed and a lot of people signed this a month before the election. Somebody got to them and argued them over to their side.

Q. They carried the banners "Vote for Roosevelt and the Union; Vote Against Heinz and the Liberty League" and such like as that?

A. Yes.

Q. And also a religious issue developed before they got through, was there?

A. That was unfortunate. I am afraid it did, yes.

Q. You were asked about changing this agreement. This agreement requires you to notify the union if you want to make any changes, does it not?

A. That's what we would agree to do.

Q. Well, it says, "until further notice," does it not?

A. That is right. We would have to notify them that the agreement was all off.

Q. It is true, is it not, that in any agreement that does not run for a fixed term, either side can terminate it?

A. I so understand it, yes.

Q. You have other agreements and they don't run for a fixed term, I believe?

A. Yes.

Q. Were you told, did you know what use was made of the signed agreement in the matter of obtaining members by the Federation?

A. Well, the impression I got on that was you could not get your grievances handled unless you were a member of the union and they are continuing right up to this day. I mean, within a month we have had a printed threat if we don't join the union we are not responsible for what goes on in front of the plant. It's those things that color your feel- [fol. 1113] ings, of course, quite a little. The whole thing, if it wasn't so tragic, it would be rather amusing. As a membership drive it has taken on some various trimmings that other membership drives don't have. I am afraid that's what it boils down to.

Q. Your interest is peace and quiet and good operation?

A. We want to make pickles and ketchup and beans and we are not interested in this other, although we realize we have a responsibility.

Mr. Reed: That's all.

Recross examination.

By Mr. Kleeb:

Q. Just one or two questions. Reading from Board's Exhibit 22, which was the final Labor Relations bulletin, the last sentence: "The wage rates and other conditions hereinabove set forth shall remain in effect until further notice." It doesn't say notice to the union or to anyone else, does it?

A. No, I consider that implied, but it doesn't say it.

Q. You yourself thought, did you not, that if you signed a contract with the union's name on it, they were going to use it for their membership drive; say "this is what we got" and try to use that to get other employees in?

A. There was certainly no objection to their using that and they probably would have.

Q. You don't blame them for it, do you?

A. Not at all. I don't blame them, but what I blame them

for is misrepresentation. "This is what they got" and they certainly did get it and if they can use it all right.

Q. You see nothing wrong to get a contract signed by the union and company representatives using that as a selling medium?

A. Not if they used it in the right way and don't twist it up or make false remarks on it. Don't make a statement "you boys have got to get in because you can't get any attention from anybody. You have got to come to us and have us handle your grievance. You have got to pay your dues and belong to us if you want any service." All that sort of thing. It is nebulous, and there it is.

Q. This Labor Relations bulletin was posted all over the [fol. 1114] factory, wasn't it?

A. That's right.

Q. And still is?

A. And still is.

Mr. Kleeb: That's all.

Trial Examiner Walsh: You are excused, Mr. Riley.

(Witness excused.)

Mr. Reed: Mr. Anderson.

Hugh C. Anderson, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Mr. Anderson, I believe you are vice president of the H. J. Heinz Company?

A. One of the vice presidents.

Q. How long have you been connected with the Heinz Company?

A. Over 50 years.

Q. I understand that you weren't the person primarily conducting the negotiations with this union in the strike, and so on, during this time.

A. That's right, I was not.

Q. But you got reports of it from time to time from Mr. Shinabarger and Mr. Riley?

A. Yes.

Q. Now, there has been testimony here about a certain agreement that was brought to you on the 15th of July, or thereabout, by Mr. Shinabarger and Mr. Riley, and that you raised some objection to it; is that true?

A. That's true.

Q. What objection did you raise to it?

A. It wasn't an agreement because one paragraph of it said they agreed to disagree. I can't recall the exact words now.

Q. You pointed that out, did you?

A. Yes. That's no agreement. That can't go on the boards.

Q. Did you have any question about the length of it?

A. Yes. I said it was entirely too long.

Q. Also there was testimony here that you came into one [fol. 1115] of the meetings when negotiations were going on with the union. Do you recall that?

A. That's right.

Q. That was before the wages were agreed upon, I believe?

A. Yes.

Q. And you sat through it while they were discussing the union demand for a greater wage than the company had conceded up to that time?

A. Yes.

Q. Did you make any statement at the close of that meeting in response to anyone's question?

A. Yes.

Q. What was that?

A. Well, as I recall it, I sat there for about an hour and a half listening to a repetition of a lot of things that had happened before. There was nothing new brought out, and Mr. Wilner, I think it was, as I recall it, asked me what I thought about the matter, and I told him, "I haven't heard anything new." Everything that had been said had been reported to the directors, and we had supported Mr. Riley and Mr. Shinabarger in every stand they had taken and that we had approved of their actions.

So far as the wages were concerned, we had gone our limit, and that was the best we could offer, and they could take that or leave it.

Q. Did you make the statement that Mr. Shinabarger and Mr. Riley had full authority to make any agreement that they saw fit?

A. No. That would be like signing a blank check.

Q. Did they have authority to make any agreement without coming back to the Board?

A. No.

Mr. Reed: Cross examine.

Cross examination.

By Mr. Kleeb:

Q. You had the utmost confidence in Mr. Riley and Mr. Shinabarger, didn't you?

A. Yes.

Q. Well, why would giving them authority be like giving them a blank check?

A. I might have confidence in a lot of people and not give them my pocketbook.

Q. You considered giving them authority to bind the company would be like giving them your pocketbook?

[fol. 1116] A. It might cost them a lot of money. Same thing.

Q. Did the board of directors instruct them everything they did had to be affirmed by the board?

A. So far as general principles went, yes.

Q. Were you at the board meeting when it was decided that the committee of the union, the A. F. of L. union, would not go into the labor-relations bulletin?

Mr. Reed: This is objected to for the reason it does not correctly state the testimony. There is no testimony of that kind.

Trial Examiner Walsh: Sustained.

By Mr. Kleeb:

Q. Was there a board of directors meeting, to your knowledge, at which it was decided that the name of the local union of the A. F. of L. should not be put in the labor-relations bulletin?

A. No.

Q. There was no such meeting?

A. Not to my knowledge.

Q. Do you know, now, or did you know, then, the reason why the name was excluded.

Mr. Reed: This is objected to as not cross examination. The witness hasn't been asked anything about this. He was asked about the specific meeting he was in.

Trial Examiner Walsh: Sustained.

By Mr. Kleeb:

Q. You objected to the length of the labor-relations bulletin at the very beginning, did you not?

A. Yes.

Q. Did you have any authority to bind the company on that without taking it to the board of directors?

A. No.

Q. Well, you told Mr. Riley and Mr. Shinabarger it was too long, without taking that subject matter to the board of directors, didn't you?

A. Yes.

Q. How did you know you had——

A. That was my opinion. The principal objection was that one paragraph, that wasn't an agreement about anything. That was the real objection.

Q. But length was no objection?

A. Yes, I objected to the length.

Q. Then did the statement of policy or labor-relations bulletin go on up to the directors for them to say you were [fol. 1117] right or wrong about the length?

A. That particular one, no. They took it back to correct.

Q. And do you recall when the question of length became an issue?

A. I couldn't state exactly the exact date.

Q. Have you any thought on the matter; any recollection on that matter?

A. As to when the length came up?

Q. Yes.

A. Oh, I think the first draft of an agreement that was submitted was too long; right from the start.

Q. Board's exhibit 20 is the July 15th draft. Do you recall it (handing to witness)?

A. I would have to read it over.

Q. Well, I will tell you this, sir, it has been identified as the draft.

A. Yes.

Q. What I wanted to ask you is this: You will note in this July 15th draft a procedure of presenting grievances is set forth.

A. Yes.

Q. Then in the July 30th, which Board's exhibit 21 has been identified to be, do you not have that grievance procedure?

A. That's correct.

Q. Do you recall what occasioned that or what brought about that change?

A. In later discussions—I was only at the one meeting, but it was reported to me in later discussions that the committee representing the A. F. of L. union just wanted seniority handled as heretofore.

Q. I mean, the grievance procedure was taken out, was it not?

A. Yes.

Q. The entire adjustment of grievances, except for the small paragraph about it in the last draft?

A. That's correct. It was too involved, we thought. A lot of our employees don't understand English and it was entirely too long and involved.

Q. And do you know who wrote, who actually wrote the final draft?

A. The final draft of which?

Q. Of the labor-relations bulletin which was posted.

A. So far as I knew, so far as I can recall, that was [fol. 1118] handled by the lawyers.

Q. Do you know personally whether Mr. Howard Heinz drafted that, any of it, or most of it?

A. He did not, to my knowledge.

Q. As far — you know.

Now you will notice on July the 15th, on that draft, the first paragraph the union is named.

A. Yes.

Q. And the last draft, so identified as the one that was posted, Board's exhibit 22, in the first paragraph thereof the union is not named.

A. Except as the certified collective-bargaining agency.

Q. I mean, it is not specifically named.

A. It is not in that paragraph, but in the last paragraph it is.

Q. No, sir; I said in that paragraph.

A. In that paragraph it is not. There were quite a few of those paragraphs changed.

Q. You will admit, will you not, sir, that the first paragraph of Board's exhibit 20, which was the July 15th draft, and the first paragraph of Board's exhibit 22, which was the one that was finally posted, are about the same number of lines and the same number of words and about the same length?

Mr. Reed: That is not a question for the witness. That's perfectly obvious.

By Mr. Kleeb:

Q. I mean, it's obvious, isn't it?

A. It is obvious, yes.

Q. How do you explain it that the company took the position that in the final draft it would not insert the A. F. of L. local union as such?

Mr. Reed: This is objected to because it isn't true, it is in the agreement, and, in the second place, this witness has not testified to anything about that. It is not cross examination.

Trial Examiner Walsh: Sustained.

Mr. Kleeb: That's all.

Mr. Reed: That's all, Mr. Anderson.

(Witness excused.)

[fol. 1119] Robert G. Shinabarger, a witness called by and on behalf of the respondent, being first duly s-*own*, was examined and testified as follows:

Direct examination.

By Mr. Reed:

Q. Mr. Shinabarger, what is your position with the Heinz Company?

A. I -m a director and assistant to Mr. S. Mueller. Mr. Mueller is first vice president in charge of manufacturing operations.

Q. Mr. Mueller is quite an old gentleman, isn't he?

A. 78.

Q. And you do most of the active work, I imagine, now?

A. I wouldn't say that, Mr. Reed. That is, when Mr. Mueller is on the job his decisions are made and in Mr. Mueller's absence I, of course, confer with the other directors.

Q. How long have you been connected with the Heinz Company?

A. 27 years.

Q. You were one of the men who was active in meeting various strike committees and carrying on these negotiations we have been talking about here these last few days?

A. That's right.

Q. You heard Mr. Riley's testimony, all of it, didn't you?

A. Yes, sir.

Q. Did he relate, substantially correctly, according to your recollection, the various steps that led up to the strike and the negotiation of the association contract?

A. He did, as I know them.

Q. Is there anything you would want to add to that, any change?

A. Not a thing that I——

Q. Were you present when Mr. Call came to see Riley?

A. I was not.

Q. You weren't there that day. Were you present when Mr. Kracik came to see Mr. Riley?

A. I was not present when Mr. Kracik had his two meetings before the strike, or the first meeting following the strike. That is, I was not present on the 18th of June.

[fol. 1120] Q. Were you present when the association appeared and demanded recognition for their organization?

A. That, as I recall, Mr. Riley testified, was on the 30th of April, and I was not present.

Q. You were not there then. Were you present in the conferences in the mayor's office?

A. I was present in the mayor's office at three conferences. Mr. Riley was in the mayor's office at least once when I was not present.

Q. Were you present at the time the agreement was signed to terminate the strike by an election?

A. I was.

Q. Did you go with Mr. Riley and myself down to the

room that was occupied by the union representatives that day?

A. I did.

Q. Will you state what conversation occurred, if any, with reference to a change in the agreement suggested by Mr. Wilner in which he wanted to insert the word "written" before the word "agreement."

A. Well, you objected to the "written" being inserted ahead of "agreement", and it was just one of those things we were going to meet when we got to it.

Q. What statement did I make, if anything, as to why we wouldn't have that word in there?

A. If I recall correctly, you said that is one of the points to be negotiated.

Q. Did you hear any explanation such as Mr. Wilner gave to the effect that if that word were there it would require the company to sign an agreement whether it reached terms with the union or not?

A. I don't believe it did.

Q. You didn't hear any such statement as that?

A. No.

Q. Were you present the day that the meeting on July 1st, that Mr. Riley testified to, when Mr. Kracik was there—they were going to the meeting, the mass meeting that night?

A. That is right.

Q. Were you present when Mr. Kracik came back after that meeting?

A. I was.

Q. What was said then?

A. Well, on leaving the meeting, as Mr. Riley testified, [fol. 1121] we compared notes, and the question sort of hit us both as to whether or not these people definitely felt they were going to have a written agreement.

Q. That is, an agreement between the company and the union signed by both?

A. That is right, with both names signed. And we discussed it for a few minutes and, realizing that they were going to have their meeting of the union for a decision on the matter, and wishing to make very certain that there was no misunderstanding, we sent to union headquarters to get back such members of the committee as we had con-

ferred with in order to clear up the one point. Mr. Kracik, I believe, was the only man available. He returned.

Mr. Riley very briefly told him of our plan, which did not include the written agreement signed by both, and Mr. Kracik was—had no objection. He indicated that that was quite satisfactory to him, further indicating and serving notice on us that in doing so we were laying ourselves open to his coming to see us at any time. We told him that we appreciated that we were.

Q. Did he tell you that was the kind of an agreement he had with any other company?

A. He had previously told us that in our negotiations.

Q. What company did he say had that same agreement?

A. Pittsburgh Provision & Packing Company for one. I think there are others.

Q. Were you present at the meeting at which Mr. Anderson came into the room?

A. I was.

Q. What did Mr. Anderson say at the conclusion of that meeting?

A. Well, Mr. Anderson—as I recall, Mr. Anderson said nothing for about an hour and a half or perhaps a little longer, and Mr. Wilner finally raised the question with Mr. Anderson as to whether he had anything to offer. Mr. Anderson indicated that what he heard was not new; it covered the points that had been reported to him previously, that Mr. Riley and I were members of the board and had their full confidence, and that the board had approved what we had done up to that time. As far as wages were concerned, they had our best offer, and it was a case of their indicating their desire to either take it or leave it.

[fol. 1122] Q. Did he make any statement that you two would in the future have any right to close a contract or anything of that kind?

A. No, he did not. I am certain he did not.

Q. Did you have authority to bind the company without reference back to the board?

A. No, neither implied or expressed based on previous experience. I can't see in any way where we were—where such authority was bestowed on us.

Q. It is your practice always in any matter of this kind to take it up with the board, isn't it?

A. Well, I would rather say to take it up with other mem-

bers of the board. There might not be a formal meeting held, but it would be a matter of conference with other members or an executive officer.

Q. Your board is wholly composed of men engaged in the operation of your company; is it not?

A. That is right.

Q. It has no outside bankers or lawyer or any window dressing at all; has it?

A. All of the members are actively engaged in the business.

Q. So it is a practice, I believe, to consult each other at work or in their offices or informally any time about any matter?

A. That is right.

Q. Now, did your company or any of its executives, to your knowledge, have anything to do with the formation, organization, domination, or control of the Employees Association?

A. It did not.

Q. Did it contribute anything whatsoever to its organization or support?

A. Certainly not, to my knowledge.

Q. Well, you would know it if it had, wouldn't you?

A. I think I would.

Q. Have you been present at meetings with the grievance committee of the union since the strike?

A. No, not that I can recall.

Q. Was there any promise made at the time this final agreement was prepared for posting, that it would be mailed by the company to the employees?

A. I do not remember that discussion, and I am quite sure that it hasn't been brought up since. I, personally, would see no objection to its having been mailed if the re-
[fol. 1123] quest had been made.

Q. The situation when you mailed—the fact is that if it were mailed without posting, it wouldn't do any good; isn't that true?

A. That was the only contact we had with our employees, with our people; that is, the plant was under a strike and we could not contact them in any other way.

Q. In your opinion, does the posting and the continuous posting of a bulletin such as this reach your employees as well as any other system of publication?

A. Well, I would think it would. It is right there. It is available. And if there are any employees that do not understand any of the paragraphs or provisions, certainly there are enough of them that do understand it to explain it to the rest.

Q. That agreement is still posted?

A. Yes, sir.

Q. Now, you were opposed, I believe, to having an agreement that read between the Heinz Company and a particular union signed by both of them; were you not?

A. Well, I am personally opposed to a term agreement.

Q. Why?

A. Well, I am personally opposed to taking on obligations that extend over a long period of time, and certainly couldn't see that with a term agreement—that looks to me as though we would be giving all and getting nothing in return. I have not had a lot of experience with union agreements, but if you did have a term agreement and the union did not break the agreement, what assurance have you that your millwrights, your machinists, your electricians, or your workers in general would not pass on into some other business or some other job if you did not raise with the market. And nobody has ever indicated to me where it is either good business or necessary or desirable.

Q. That is, you would lose your labor, if there was a competitive market if you didn't raise, notwithstanding an agreement; would you not?

A. That is the only way I could answer it.

Q. Were you advised what your obligations were under the agreement as it was finally formulated and posted?

A. Well, I would understand that our obligations were under this bulletin or agreement as posted, that we would comply with the provisions thereof, and if at any time it [fol. 1124] would be necessary to make a change why, I would think the proper procedure to be to confer with the bargaining agency.

Q. Yes. Were you advised that the company would be firmly bound to these wages and hours by a bulletin or an agreement published as this one was?

A. Yes, sir.

Q. Are there any other reasons that operated in your mind to make you opposed to an agreement between the company and the union signed by the company?

A. Well, as I say, I have had and carried in my mind more definitely the term proposition. There are others, They have been enumerated. That gets into a discussion—into the psychology of this and that, and as long as it is not a term agreement, why shouldn't the negotiations and the relationship be just as satisfactory on a basis of understanding? That is what I haven't been able to do——

Q. You have had other union contracts at the Heinz Company, have you, and you have dealt with unions in other plants?

A. I personally have not.

Q. Oh, well, the company has?

A. This company has.

Q. And in any of those have you had contracts signed by both the company and the union?

A. I have never known of one.

Q. This, I believe, was the first experience of the Heinz Company with a general union of all employees?

A. That is right. In the previous 68 years we haven't had any experience.

Mr. Reed: Cross-examine.

Cross-examination.

By Mr. Kleeb:

Q. Exactly what was it that caused you and Mr. Riley to suddenly decide to call back Kracik or someone from the union to tell them that the company would not sign no contract?

A. Well, I believe, Mr. Kleeb, that I have testified here just as clearly as it is possible. On leaving the meeting we discussed the various items that had been considered and talked about. We were simply checking over and the question was raised in our minds as to whether or not there had been any misunderstanding. If there had [fol. 1125] been, we wanted it corrected before the committee got back to the union headquarters, to the union meeting that night.

Q. That is the only reason?

A. That is the only reason that I know.

Q. You stated your reasons for objecting to a term contract, I believe?

A. Yes, sir.

Q. And what is your objection to signing a contract with the union, signing a contract not for a definite term?

A. Well, I don't know that I personally have any definite objection. On the other hand, I see nothing to be gained by it. I see no advantage to anyone, because if there has been a misunderstanding, if their is a condition that is unsatisfactory, you can open it up for discussion at any time.

Q. Signed or not signed?

A. Yes, if it is not for a particular term.

Q. All right. Yet the Heinz Company position, as far as you know, is to refuse to sign a contract along with the signature of the union being on the same contract; isn't it?

Mr. Reed: We have one in evidence here.

A. Well, we have never, to my knowledge, been asked before to sign an agreement with a union covering terms, rate of wage, and hours. We have had nothing but union carpenters, as I recall, for many years; we have had, Mr. Riley testified, union drivers in various cities for a number of years; and nobody has ever asked, to my knowledge, for a contract to be signed by both parties. It was a gentleman's agreement.

Q. No one has ever asked for a signed contract signed by both sides?

A. Not except the present union.

Q. Don't you know that the Heinz Company policy at the present time and up to the present time has been opposed to contracts between unions and companies signed by both sides, such contracts covering wages, hours, and working conditions? Don't you know that to be the fact even for a definite or an indefinite period of time?

A. I don't think that the matter was ever discussed [fol. 1126] before. I don't think that it was brought up. I have been around there for a long time and, as I say, until this issue was raised, it was never raised.

Q. Well, it was raised by this union, wasn't it?

A. In a half-hearted way. In other words, here is Mr. Kracik, who has indicated that he didn't care. Now, Mr. Kracik may not be an officer of the union, but he is the international organizer. If I am correctly informed, he is the man that organized the union.

Q. You know that one of the bones of contention was that there should be a written, signed agreement, Mr. Shinabarger? You know that?

A. Well, as I say, in the minds of some, I think in their union there has been some division of opinion there. There must have been, because I think that I have very definitely in mind Mr. Kracik's attitude, and yet we hear so much about our failure to sign an agreement with the union signing also.

Q. So in your opinion that wasn't even in issue?

A. Not a substantial issue.

Q. Is that your opinion?

A. That is my personal opinion.

Q. You stated something about raising wages in a term agreement?

A. That is right.

Q. Do you know of anything in any labor agreement that you have seen signed by both parties that prevents the company from raising wages?

A. Oh, I expect that they would be glad to open the subject and give you a new agreement if you wished to increase your wages.

Q. And they make no objection if the company voluntarily increased their wages?

A. I expect they would stand for that.

Q. Yes. So the fact that it is a term agreement wouldn't in any way prevent an increase in wages; would it?

A. Oh, no. You could get away with that, I expect.

Q. Yes. And there is nothing in this labor relations bulletin, which you have posted, which prevents an increase in wages; is there?

A. No. But at any time if conditions cease to be such in this ever changing world that we found it necessary to decrease wages why, then we would call a conference of the proper members of the union.

[fol. 1127] Q. Well, you might call a conference. You don't have to?

A. Oh, well, now, in a practical application of that, I would think that it would be well to do so.

Q. Now, Mr. Shinabarger, under the terms of that Labor Relations bulletin, you don't have to; do you?

A. Well, I would.

Q. You don't have to under the terms of the bulletin; do you?

A. Well, I am not a lawyer, I don't know; but I say I would, and I would say it would be a very practical thing to do so.

Q. Because you might have a strike on your hands or some such thing as that?

A. Well——

Q. Is that what you mean by practical?

A. You would either have a strike or you would have a misunderstanding or you would be accused of bad faith, or something.

Q. You who were a party to agreeing to this labor relations bulletin, don't know right now whether or not under the terms of it you could decrease wages without calling a conference; is that what you want us to understand?

Mr. Reed: The agreement speaks for itself. It doesn't make any difference what the witness understands by it.

Mr. Kleeb: I think it does. I think it is material what this witness understands about the agreement to which he was a party.

Trial Examiner Walsh: You may answer the question.

A. Well, I—state the question again.

(Question read.)

A. Well, I answer that this way, that I would not.

Q. Do you call that an answer to my question? You know the terms of the bulletin, don't you?

A. I read English.

Q. You know the terms of that bulletin, don't you?

A. Fairly well.

Q. Only fairly well?

A. Yes, you want me to say that on a technical basis we would issue instructions?

Q. Is there anything in that labor relations bulletin, Board Exhibit 22, which prevents the Heinz Company from the day after tomorrow reducing wages 10 per cent?

[fol. 1128] A. I would assume——

Q. Without consulting the union?

A. I would assume that we could, yes.

Q. Reduce wages without consulting the union?

A. That is right, but I again say that I wouldn't.

Q. You do know that in the ordinary signed trade agreements signed by both the union representatives and the company, that the company, if it sets a wage scale in that agreement, cannot reduce the wages if the agreement is for a certain time?

Mr. Reed: Yes, if the agreement is for a certain time.

A. That is right.

Q. That is right, isn't it?

A. Yes.

Q. Were you and Mr. Riley ever given authority by the board of directors to make any material change in any of these labor bulletins, these various drafts, without the consent of the board of directors?

A. I don't know about Mr. Riley, I can only speak for myself. As far as I am concerned, I never presented one to the board of directors. I presented, perhaps, various drafts to other members of the board for discussion.

Q. Well, did you feel obligated to do that?

A. I would say, Yes, and, in addition to that, I would want the benefit of their judgment.

Q. Board's exhibit 21 is the draft which has been identified as having been shown to Mr. Wilner and the committee July 30th, and he testified about the name of the union not specifically appearing anywhere in that draft, when it was first presented. Do you remember that?

A. Sorry, I think I was out of the city at that time.

Q. You weren't in on that conference?

A. No.

Q. Were you at the conference when Mr. Wilner made mention of the fact that the union's name was not mentioned, and that he wanted it inserted some place, and the company let him put it in the last paragraph?

A. To the best of my knowledge, no.

Q. Would you say, then, so far as the form of these drafts are concerned, that the language of that really had [fol. 1129] been more concerned with by Mr. Riley than by you?

A. Well, Mr. Riley and I worked very close on this proposition from the time I got into it, on the 23rd of June, until the 14th day of July. On the 14th day of July I had what we call in our business a convention, and I was also out of the city for a period of one week.

Now, from that time, on, I was not into it very deep. There may have been in there some place one meeting that I attended—I am not just certain about that, Mr. Kleeb, and I don't know how much Mr. Riley was in it from that time on.

Q. When you and Mr. Riley finally agreed to the last draft to be posted, that was not taken back to the board of directors, was it?

A. I was out of town when the last draft came through. I think it was on the 16th of August.

Q. On the 11th of August.

A. No, I was here, I think, then.

Q. You were at the meeting the 11th of August?

A. I say, I think I was at the meeting early in August, but I don't recall the date.

Q. And didn't you and Mr. Riley at that time say, in effect, "These terms are satisfactory, and this is the way the bulletin will be posted"?

A. On the 11th of August?

Q. Yes.

A. No, I wouldn't remember that. I remember very definitely that meeting there in Bostwick's office on the 14th of July. We had the thing developed on a basis, and that was when we took it back to Mr. Anderson, and he didn't recognize it as an agreement.

Q. Your recollection isn't very clear now on that August meeting?

A. No, it is not.

Q. You and Mr. Riley were the negotiators for the company during the meeting, the long meeting you held over a period of two and a half days with the association May 29th and May 31st, weren't you?

A. We were, yes.

Q. Didn't you two agree finally on that letter which was mailed out to the employees on June first?

A. That was approved by other members of the board.

Q. When?

A. Well, the day it was sent out, or the night before.

Q. It was sent out June first, wasn't it?

[fol. 1130] What day was June first?

Q. Tuesday.

A. Well, some time during that weekend it was approved by other members of the board.

Mr. Kleeb: That is all.

Redirect examination.

By Mr. Reed:

Q. Mr. Shinabarger, you have testified that this is the first time any union has demanded a written contract. I guess you didn't mean to exclude the demand of the em-

ployees' association? They had also demanded a written contract?

A. Well, I mean during these negotiations the last few months.

Q. And did you hear of a report of the mass meeting of the employees on July first to the effect that the employees didn't want a written contract either? Did you get a report of that?

A. You say a report from the mass meeting of July first? I don't know.

Q. There is in evidence here a statement of someone who attended the meeting of the employees who said they didn't want a contract, a written contract, or a term contract, perhaps we should call it. Did you hear that report after that mass meeting?

A. Yes, I did, and I am just trying to think where I saw that.

Mr. Kleeb: I wish to object to an answer to such a question unless it is developed Mr. Shinabarger personally knows of any action by the union, personally knows from any official representative of the union that they would not sign a contract; otherwise it is purely hearsay.

The Witness: I think it is a matter of record in print.

Mr. Kleeb: Well, if it is printed——

Mr. Reed: Naturally, he wasn't at a union meeting.

Mr. Kleeb: If it is in print and it refers to something that is evidence, it is there. If it is not, then let Mr. Reed offer what is in print in evidence.

Mr. Bostwick: I guess it is in evidence.

Mr. Reed: It is in evidence.

Mr. Kleeb: Then it is not necessary to answer the question.

Mr. Reed: It is all right to ask him if he heard the re- [fol. 1131] port about the results of a meeting in which he was interested, a press report.

Trial Examiner Walsh: I will overrule the objection.

By Mr. Reed:

Q. You may answer whether you did hear that report or not.

A. Well, I did, yes, Mr. Reed.

Q. I am trying——

A. I am trying to fasten onto where I heard it, and how, and, as I say, I think it was in a publication. I am not sure whether it was the publication put out by the Catholic Institution or one of the others, but I do recall having seen it somewhere.

Q. When you said that you didn't want a term agreement because you would have to raise wages, anyway, if conditions demanded it, I assume you meant that the obligations weren't equal, that you were bound and you couldn't hold the employees to their responsibility?

A. That is right.

Q. What was the chief objection that Mr. Anderson made to the July 15th agreement?

A. Well, that we failed to agree; we failed to do a finished job.

Q. That is, on perishables, wasn't it?

A. That is right. And he also objected to the length, posting it on the board, and its shape, that it would be too long and too difficult to read, and not understandable.

Mr. Reed: That is all.

Recross-examination.

By Mr. Kleeb:

Q. That Catholic paper, or whatever it is you refer to, you read something about the union's action and the agreement; is that what you are talking about?

A. Yes.

Q. When did you read that for the first time?

A. Oh, I couldn't answer that, Mr. Kleeb. It was some time ago.

Q. Since the strike ended, or——

A. Oh, yes, certainly, because I don't think it was published until some time in July.

Q. Did you know when you read it—I mean, you knew when you read it that it wasn't the official organ of the Amalgamated Meat Cutters & Butcher Workmen of North America or of the Canning & Pickle Workers' local; didn't [fol. 1132] you?

A. Well, I wouldn't expect that it would be.

Q. No.

A. I would assume that it was not.

Q. And you assume, then, that, when you read that, it was not?

A. As I recall that was just a report of that meeting. It was just simply a report of that meeting, a write-up, a report of the meeting as carried on the first of July.

Q. By some person? Somebody wrote that article, and, when you read it, you didn't know even who wrote it; did you?

A. Well, I think Father Rice wrote it.

Q. His name doesn't appear on the top of the article, so you hardly would have known it at the time; would you?

A. If that is the case, of course, I wouldn't.

Q. And at further inquiry you discovered that he was the author of the article; is that right?

A. Well, it was offered in evidence here earlier in the trial, or earlier in the proceedings, and, in fact, I hadn't seen it for some weeks previous to that.

Q. Before you heard Father Rice having said something about he himself having written it?

A. The record will show.

Mr. Kleeb: That is all.

Redirect examination:

By Mr. Reed:

Q. You have sat in meetings in which Mr. Rice was one of the representatives of the union; hadn't you?

A. That is right.

Mr. Reed: That is all.

Trial Examiner Walsh: Do you have anything further, Mr. Kleeb?

Mr. Kleeb: No.

By Trial Examiner Walsh:

Q. Mr. Shinabarger, the objection made by you and Mr. Riley to a term agreement is, of course, quite a familiar objection, and it is a matter of some concern, of course, whether a business, if so bound in regard to important costs, they will not be able to meet changing economic conditions, particularly when conditions change for the worse. Now, that objection is not only a very general objection [fol. 1133] but one that I thoroughly understand, I think.

Did you or Mr. Riley or any of your associates undertake to find any other way out of that difficulty than not signing a term agreement?

A. Well, I don't know that I understand your question. In other words, reducing it down to this, you either obligate yourself for a term of months or you do not. Is that not correct?

Q. You have an agreement that covers, let us say, wage rates and hours and seniority and vacation and grievances, and let us say you enter that for a term of, say, a year.

A. Yes?

Q. In the course of a year important changes, economic changes, may occur, and it may be very necessary, indeed, desirable, for wage rates to be reduced.

Now, as a matter of practice, of course, wage rates are the important things, and not this seniority and grievance machinery. They do not ordinarily embarrass, over the period of a year.

Now, my question is whether any of you who represented the company in these negotiations tried to resolve that problem without giving up the idea of a term agreement entirely, resolve the difficulty in regard to wage rates bound over a period of months or a year.

A. Well, the atmosphere at that time, it was just unsettled, as it has been testified before, I don't know that we did just take the line you are talking of now and go at it from that standpoint. It wasn't suggested, as I recall.

Q. Do you happen to be familiar with any of the trade agreements in other industries along with other firms?

A. You mean labor agreements?

Q. Yes, labor agreements which are term agreements but have in their substance a flexibility in regard to wage rates. Are you acquainted with any such labor agreements?

A. Well, I have seen some that are terminated on notice; I have seen some that are terminated on a 30-day notice, or a 60-day notice, or a 90-day notice.

Q. Have you seen any that are long agreements, let us say a year's agreement, with the exception that machinery is provided for a re-opening of the wage-rate question on the petition of either party?

A. I don't just recall one now, no.

[fol. 1134] Q. There are such agreements. I wondered

whether or not you had brought that up as a way out of this difficulty in regard to a term contract.

Another thing I would like to be clear about: How many members are on the board of directors?

A. 12.

Q. And you all are operating directors? You all have actual functions in the company?

A. That is right. Of course, they are scattered, to some extent. That is, we have one man in London, England, and we are not all here all the time.

Q. Representing you and the firm there?

A. That is right.

Q. And your particular operating responsibility is what?

A. Well, I spend my entire time practically in the manufacturing end of the business.

Q. In charge of manufacturing?

A. That is right. Mr. Riley has charge of one branch and I have charge of another.

Q. What is Mr. Riley charged with?

A. Mr. Riley is responsible for the quality of the merchandise and the processes and that sort of thing, and the actual making of the merchandise.

Q. Can you, for the sake of the record, suggest the special responsibilities of two or three of the other of your associates?

A. Well, of course, Mr. Anderson, who is vice-president and treasurer, is in charge of finance; Mr. E. D. McCafferty is secretary of the company; Mr. Sebastian Mueller is vice-president in charge of manufacturing; Mr. N. G. Woodside is vice-president in charge of sales.

Q. Yes. Well, now, in that schedule of responsibilities, is there any one person whose function is industrial relations? Have you a staff officer who is a board-of-direct-member?

A. No, we have not. That is, in other words, you might say this is something that has developed really in the last few months. Mr. Howard Heinz, the president, has always been very much interested in the whole proposition, and, as I say, for a period of 68 years we have gotten along very nicely. And Mr. Mueller, because of his age and the years of experience in the business has in the last few years devoted a great deal of his time and a great deal of his resources to the looking after of employees generally, and he has made that his chief interest in life.

Q. That is, up to the present time there hasn't been [fol. 1135] anybody delegated by the board of directors, but not himself a member of the board, to take care of and to be the head of industrial relations?

A. Not in the manner in which you have in mind, as I would see it. Mr. Riley has looked after a portion of it, a large portion.

Q. Yes.

A. Mr. Anderson perhaps other parts of it.

Q. Yes, and you have other persons who have not?

A. It is not headed up just as you have in mind.

Q. Well, then, others, for example, Miss Weizman, would be considered as doing something?

A. Yes, she is for the Pittsburgh Plant, not the business as a whole.

Q. Say Mr. Hargraves, and the testimony has shown he has had a certain functioning in this field of industrial relations?

A. That is——

Q. Now, is there, so far as you know, any project—let me put it this way: Has there been any project or plan discussed by the board since the strike was settled to coordinate all problems of industrial relations in the hands of a staff officer, either a member of the board or employed by the board?

A. Well, I would say that the subject has been discussed informally at various times, and there again the big job is to get the right man. And I wouldn't say that we have made any definite progress along that line.

Trial Examiner Walsh: All right. That is all I have.

Mr. Reed: Your question suggests one I neglected to ask.

By Mr. Reed:

Q. What was responsible or why have you discontinued some of the social functions, and so on, that you had there prior to the strike?

A. Well, there are two reasons, as I see it. Now, as far as the gatherings in the auditorium and bringing the people together, we feel that it was unwise as long as the feeling seems to exist that has been in effect. The other very definite reason is that the members of the committee openly indicated to us that the things we were doing were not appreciated and not wanted.

I remember quite a discussion with the vice-president, Mr. Steinmetz, of the union, in one of our meetings, and I will not at this time say the date, but Mr. Steinmetz frankly stated that he felt that that was what the people wanted, that as far as our auditorium and service building [fol. 1136] was concerned, outside of the dining room, there was very little interest. The dining rooms did make a nice place to eat their lunch, but aside from that he felt that the rest didn't amount to anything and it would be just as well off without it.

Q. He said, "Put it in a pay envelope"; didn't he?

A. Something like that.

Mr. Reed: That is all.

Recross-examination.

By Mr. Kleeb:

Q. Do you recall suggesting, or do you recall Mr. Riley ever suggesting to the union representative in any of these conferences a flexible wage clause in the contract to meet any change in conditions?

A. No, I do not recall any at this time.

Mr. Kleeb: That is all.

Trial Examiner Walsh: You may be excused.

COLLOQUY

Mr. Reed: That concludes the respondent's case.

Mr. Kleeb: And the Board has no rebuttal.

Mr. Reed: We are through.

It seems to me that if we are going to file briefs, it may be there ought to be a little discussion about what the Board seeks here. I don't understand, very frankly, and if we are going to give you briefs, or memoranda, I am afraid we will just miss contentions entirely.

To my way of thinking, there has been nothing shown here that is continuing at the present time, and even if everything were believed as stated by the petitioner in the case, it all happened in April and May, and whatever damage, if any, was done, was all cured by an election. Now, I can't see how the Government can ask or be asking for any kind of a cease and desist order at the present time under familiar equity rules if nothing is occurring that needs to cease and desist. There is no occasion for

it. And if that is to be a point, if that is going to be urged, we ought to know it now before we prepare our memorandum.

The other point we may misfire on somewhat, but I think I know a little more about what they are shooting at there than I do in that other matter. Perhaps Mr. Kleeb would care to make some statement.

Mr. Kleeb: Well, if the Trial Examiner please, I don't intend to argue the Government's case orally on the record or off the record, nor will I present any briefs. Therefore, I believe that it is up to Mr. Reed to conclude what he [fol. 1137] wishes to present in his briefs in the form of an argument, and if he thinks certain issues are not issues, why, then, that is up to him to conclude, but I do not think it is for the Government's counsel to point out to Mr. Reed any issues which the Government thinks are involved in this case. I believe that the pleadings and the record should indicate to him what he wishes to argue and not to ask me to tell him what he should argue.

Mr. Reed: But the Government is the plaintiff. It is seeking some relief. I assume it is seeking some order of some kind. Now, whatever kind of an order it is seeking makes a difference in how you treat the evidence.

Now, are we just submitting this to the Examiner with no briefs, no arguments, no theory, and ask you to unravel and find the relevant facts, or are we driving at some decree or order? That is what I don't understand.

Mr. Kleeb: Well, of course, I take the definite position that the record has been made. You, the Trial Examiner, have the record, and I don't find it necessary for me to present any theories for the record or argue any theories. The allegations have been made; the answer has been given; and the proof has been offered. I don't see that there is any necessity why I should present any theories on the Government's case to Mr. Reed.

Trial Examiner Walsh: I don't know whether I should be disposed to undertake to enlighten Mr. Reed. I take it that we are pretty clear as to the pertinence of the charges in the complaint under Section 8, subsection 5, and I take it that when you said that part of this has been met, you were referring to that, as to what the issues were. Now, the issues involved in the complaints were heard last week, on which so many witnesses came before us, and had to do with the charges in the complaint under section 8, subsection 2, and, inferentially, of course, section 8, subsection 1.

Trial Examiner Walsh: Now, as I understand your point, if there were any merit to those charges that merit is no longer standing because it is obsolete.

Mr. Reed: Yes.

Trial Examiner Walsh: I cannot clearly say that the Board would be inclined to agree or disagree. My advice would be that you assume they would disagree in order that you may cover the thing and secondly, that you keep in mind [fol. 1138] that those complaints may be considered by the Board as matter upon which, in part, they can come to some conclusion concerning the charges under subsection 5, of section 8. That would be, in my estimation, a wise way to go about it.

Mr. Reed: Do you desire briefs or memoranda or are you just going to take this as it is?

Trial Examiner Walsh: I think an Examiner is always very glad to get a brief, but he is not permitted to ask for one. I would be very glad to receive a brief, of course, from either of you. I would be very glad to hear all argument now.

Mr. Kleeb: I reiterate what I said before.

Trial Examiner Walsh: Mr. Kleeb has already made his statement.

Mr. Reed: It seems to me like sort of throwing everything up in the air and wondering what comes down, as to the issues.

Trial Examiner Walsh: I would be very glad to get a brief on whole or any part.

Mr. Kleeb: If that's the case, I would like to request that decision be made by Mr. Reed on briefs. That is, a time should be set.

Trial Examiner Walsh: The time is set. The briefs have to be turned in by five days from the time the hearing is adjourned.

Mr. Reed: If the Government isn't going to file any brief why we won't either.

Mr. Kleeb: I definitely am not.

Trial Examiner Walsh: Any brief either of you present would be for my benefit, so to speak, not the Board. The Board would act upon the basis of the record. That will be all, then, gentlemen?

(Whereupon, at 4:15 o'clock p. m., November 26, 1937, the hearing was closed in the above entitled matter.)

[fol. 1139] IN UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SIXTH CIRCUIT

MINUTE ENTRY OF ARGUMENT AND SUBMISSION

(November 17, 1939—Before: Simons, Hamilton and Arant, JJ.)

This cause is argued by Earl F. Reed and Robert Caldwell for Petitioner and by Philip G. Phillips for Respondent and is submitted to the court.

IN UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT

DECREE—Entered April 3, 1940

On Petition for Review of an Order of the National Labor Relations Board.

This cause came on to be heard on the transcript of record from the National Labor Relations Board, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court that the order of the Board be and the same is hereby enforced.

[fol. 1140] IN UNITED STATES CIRCUIT COURT OF APPEALS SIXTH CIRCUIT

OPINION—Filed April 3, 1940

Before Simons, Hamilton and Arant, Circuit Judges

ARANT, Circuit Judge. This is a petition to review and set aside a final order of the National Labor Relations Board, which directed the H. J. Heinz Company to cease and desist from dominating or interfering with the administration of the Heinz Employees' Association, refusing to bargain collectively with the Canning and Pickle Workers, Local Union No. 325, and interfering with the rights of its employees guaranteed in §7 of the National Labor Relations Act; and also requiring petitioner to disestablish the Association, bargain collectively with the Union, upon request,

embody in written form any understanding reached, if requested to do so by the Union, and post the usual notices of compliance.

The Board's order is based upon its findings of fact and conclusions of law that petitioner had violated §§7, 8 (1), 8 (2) and 8 (5) of the Act.

Petitioner contends that the evidence does not support the Board's findings, that some of its findings do not support the conclusions of law based thereon, and that, in some respects, the order transcends the Board's powers. The Board takes issue and, pursuant to § 10 (e) of the Act, has petitioned this Court to enforce its order.

The Union and the Association began drives for membership among petitioner's employees in April of 1937. The former organization was later chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, which is affiliated with the American Federation of Labor; the latter is not affiliated with any other organization, and its membership is confined to employees of petitioner's Pittsburgh plant. By May, each organization claimed to have been chosen by a majority of petitioner's employees to act as sole bargaining agent. On May 21, Kracik, international representative of the Amalgamated, met with Riley, a director of petitioner in charge of manufacturing, and gave him a copy of a contract proposed by the Union; and Riley agreed to discuss it with representatives of the Union. On the morning of the 24th, representatives [fol. 1141] of the Association asked Riley for an appointment to negotiate a contract, and he met both groups on that day.

The meeting with the Union representatives was held first. Riley demanded proof of the Union's authority, but they were unwilling then to reveal the Union's membership. Though the advisability of holding an election had been discussed, no method of proving the Union's authority had been agreed upon when Riley acceded to a request that the Union be given twenty-four hours in which to prove the extent of its membership.

When Riley met representatives of the Association, he likewise demanded proof of its authority, and the representatives offered to exhibit petitions signed by a majority of the employees; but Riley declined to examine them, stating that he did not wish to know which employees had joined either group. He informed the Association's representa-

tives that the Union also claimed to represent a majority of the employees, and suggested to them also the advisability of a secret election. However, no decision was reached as to how the conflicting claims should be resolved.

That night the Union voted to strike, effective immediately. During the following four days the Mayor of Pittsburgh tried in vain to obtain the consent of petitioner and the two organizations to an election. The Union would not consent to an election if the Association's name was to be on the ballot, because it claimed that petitioner had interfered with and dominated the formation and administration of the Association.

The Association was then requested to present its petitions for examination and, on the morning of May 29, petitioner publicly announced that they had been signed by 1,383 of its 2,000 employees, and that it would collectively bargain with the Association. Negotiations during the next three days resulted in an agreement with it covering wages, hours and working conditions, the terms of which were incorporated in a bulletin mailed to each of petitioner's employees on June 1. The strike, however, prevented the operation of the plant.

[fol. 1142] On June 4, all parties agreed, in writing, to an election to be conducted by the director of the National Labor Relations Board for the Sixth Region. The names of both organizations were to be on the ballot, and petitioner agreed to recognize and commence negotiations with whichever received a majority of the votes cast, within ten days after results of the election were announced. A stipulation was entered into, however, that the holding of the election would not prejudice the rights of any parties who had filed "affidavits" before the Board, the purpose being to allow the Union to prosecute charges, already filed with the Board, that the Association was a company-dominated union.

The election was held on June 8, and the Union received 1,079 of the 1,882 votes cast. The plant reopened, and petitioner entered into negotiations with the Union.

Six or seven meetings were held between June 17 and 28, petitioner being represented generally by Donald W. Ebbert, an attorney, and by Riley and Shinabarger, both directors, and the latter an assistant to one of the vice-presidents. The subject of discussion at these meetings was a proposed contract relating to wages, hours and working conditions, that had been submitted by the Union. The introductory paragraph was as follows:

"This agreement, dated the — day of —, 1937, between the H. J. Heinz Company (hereinafter referred to as the 'Employer'), and the Canning & Pickle Workers Local Union No. 325 of the Amalgamated Meat Cutters and Butcher Workmen of North America, or its successor (hereinafter referred to as the 'Union') * * *".

The only objection to this paragraph expressed by petitioner's representatives was to the phrase "or its successor," which the Union agreed to eliminate. The parties could not agree, however, upon the proposed closed-shop and pay-increase provisions.

On June 26, Wilner, the Union's attorney, requested that a higher official attend the next meeting, because Riley and Shinabarger had stated that their actions required approval [fol. 1143] of the other directors. Anderson, a vice-president, attended the meeting on June 28, but said little, though the meeting lasted an hour and a half. When Wilner asked him for a statement, he replied that, according to the reports he had received, nothing new had been discussed; and added that the directors had full confidence in Riley and Shinabarger; and there was evidence that he stated that they had full authority to act for petitioner, though this was denied by petitioner's witnesses.

Feeling that an impasse had been reached, the Union solicited the aid of federal and state intermediaries. At another meeting on July 1, petitioner refused to offer more than the ten per cent increase previously proposed, and the Union representatives departed saying they would submit petitioner's proposals to the Union that night. Shortly after the meeting adjourned, however, Riley sent for Kracik and told him that petitioner would not enter into a signed agreement with the Union. That night the Union accepted petitioner's counter proposals, which, as previously agreed, were to go into effect as of July 1.

At a meeting on July 2, Wilner voiced objection to petitioner's refusal to enter into a signed agreement. Riley stated that it was petitioner's policy not to enter into such agreements with unions, and that it did not believe that the Act required it to do so. It was finally decided, however, that Wilner and Ebbert should prepare a memorandum embodying the terms agreed upon. On July 14, Riley, Shinabarger and Ebbert met with Union representatives to discuss the memorandum, which, according to Wilner and Ebbert, correctly expressed all the terms on which an

agreement had been reached. Certain further changes were agreed upon, however, and Ebbert undertook to embody them in a final draft to be posted on petitioner's bulletin boards the following day. On the following day, pursuant to agreement, Ebbert sent Wilner a copy of the corrected memorandum, dated July 15. It was entitled "Notice to All Employees," and the first paragraph read as follows:

"Following the recent election held under the supervision of the National Labor Relations Board, in which the Can- [fol. 1144] ning and Pickle Workers' Local Union No. 325 was selected as the collective bargaining agency for our employees, we have had meetings with a committee from that organization and after several weeks of negotiation, have agreed with them as follows:"

The memorandum concluded as follows:

"The wages, rates and other matters hereinabove set forth shall remain in effect until further notice."

And the typewritten signature of petitioner appeared at the end.

Upon being notified that the memorandum had not been posted as agreed, Wilner telephoned Ebbert and was informed that Anderson had objected to certain phrases in the memorandum and thought it should be submitted to Howard Heinz, president of petitioner, then absent, before it was posted.

On July 23 or 24, Ebbert informed Wilner that Heinz wished to rewrite the memorandum and no further action could then be taken.

On July 29 or 30, Ebbert submitted to Wilner a bulletin prepared by Heinz that differed materially from the July 14 memorandum. The introductory paragraph read:

"According to the provisions of the National Labor Relations Act, we have bargained with the certified collective bargaining agency for our employees (not including, however, foremen, assistant foremen, who are paid on a monthly basis, policemen, outside truck drivers, office employees, or factory employees paid on the monthly basis) and the following understanding has been reached:"

The bulletin did not mention the name of the Union, and petitioner's signature did not appear at the end. It contained a rewording of the July 14 memorandum and em-

bodied changes in substantive provisions. On July 31, Wilner protested to Ebbert against petitioner's procedure but added that he would present the bulletin to the Union. [fol. 1145] At the August 11 meeting, representatives of the Union objected to the bulletin on several grounds, but particularly because the Union's name was omitted and the details of the grievance procedure eliminated. Petitioner's representatives replied that Heinz had made these changes to shorten the bulletin but consented to insert the Union's name in the paragraph relating to grievances and agreed to a change relating to payment for overtime. The Union representatives agreed that the bulletin thus modified should be posted. It was posted on August 15, but on August 17, Tasker, business agent of the Union, wrote the following letter to Riley:

"This is to advise you that the notice you have posted on your bill-board does not in our opinion constitute an agreement within the intent of the memorandum of understanding entered into by and between our Union and you on June 4, 1937, nor is it evidence of bona-fide collective bargaining within the meaning of that understanding or the National Labor Relations Act.

"Nevertheless, we realize that the concessions gained for the employees of the H. J. Heinz Company were the direct results of our efforts and we are anxious to conserve for the Heinz employees the benefits which they so richly deserve and for which we strove so hard.

"We, therefore, do not object to you (sic) posting of the notice but intend to lay this matter before the National Labor Relations Board in order to have that impartial agency determine whether or not you have bargained in good faith and whether you have done what our memorandum of understanding of the 4th of June, 1937, and the law requires of you."

The foregoing facts, for the most part, are not controverted. Neither is it disputed that the Union has been properly selected as the bargaining agent of petitioner's employees; nor denied that petitioner's business is of such nature as to subject it to the National Labor Relations Act. [fol. 1146] Petitioner contends, however, that the Board's findings that it violated §§ 7, 8(1) and 8(2) of the Act are not supported by substantial evidence. But petitioner did at one time recognize and negotiate an agreement with the

Association, a signed copy of which was sent to each employee, accompanied by a communication in which, after stating that the plant could not be immediately reopened because of the strike, petitioner said: "We believe that the support of the members of the Heinz Employee's Association will be an important factor in securing free access to our property." And there is substantial evidence that Heinrich, general plant superintendent, discouraged several employees from joining the Union, pointing out the benefits they had previously enjoyed and asserting that they would not fare so well if the union became established in the plant. There was also testimony that foremen Locke, Vajentic, Hayes and Brooks, and forеladies Schirer and Fisher, had engaged in similar conduct antagonistic to the Union. There was also substantial evidence that signatures upon Association petitions were solicited by group leaders, time keepers, and ordinary employees, during working hours; that supervisory employees directed some of this solicitation; and that, on two occasions, foremen held departmental meetings for organization purposes. The Board found that petitioner, through its supervisory employees, had interfered with, restrained and coerced employees in the exercise of rights guaranteed to them by § 7 and had interfered with and dominated the organization and administration of the Association. Petitioner's chief criticism is that the Board did not believe its witnesses. Since, however, the Board's finding is based on substantial evidence, it must be accepted here. 29 U. S. C. A. § 160 (c); Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197. See National Labor Relations Board v. Waterman Steamship Corp., (decided February 12, 1940), — U. S. —.

Petitioner also contends that, even if its supervisory employees did engage in the aforesaid activities, there is no evidence that it expressly authorized or ratified those [fol. 1147] acts; on the contrary, when they were brought to its attention, it claims that all foremen were instructed to remain neutral and not discriminate against any employee because of union activities. But there was no evidence that petitioner directed any supervisory employee to communicate its alleged neutrality to the employees. If petitioner had really wanted its employees to know that they might with safety join whichever union they desired, the bulletin boards were the obvious and, because direct, the most effective means of assuring them of its impartiality. There was abundant evidence that the ordinary

employees feared the disfavor of those from whom they were accustomed to taking orders. Since they were justified in believing that these supervisory employees were acting as petitioner's representatives, petitioner is responsible for what they did. National Labor Relations Board v. A. S. Abell Co., 97 F. (2d) 951 (C. C. A. 4); Swift & Co. v. National Labor Relations Board, 106 F. (2d) 87 (C. C. A. 10). Cf. National Labor Relations Board v. Swank Products, Inc., 108 F. (2d) 872 (C. C. A. 3); Cupples Co. Manufacturers v. National Labor Relations Board, 106 F. (2d) 100 (C. C. A. 8).

We are of the opinion that petitioner violated §§ 7, 8 (1) and 8 (2) of the Act, though there may have been neither express authorization nor ratification.

Petitioner contends that the Board's order that it withdraw recognition from and disestablish the Association is not warranted by the finding that it dominated and interfered with the organization and administration of the Association because it contends that the pro-Association activities were limited to the organization period and ceased some five months before the Board's complaint was filed; that not more than nine of its supervisory employees were shown ever to have participated; and that the election results revealed the ineffectiveness of their activities.

We are of the opinion that the Board's order should be enforced.

Section 10 (c) of the Act empowers the Board to order such affirmative action as will effectuate the policies of the [fol. 1148] Act. The record supports the Board's view that disestablishment of the Association is necessary to assure petitioner's employees that they are free to exercise the rights guaranteed to them by § 7. We doubt if any employee would infer from mere negotiation with the Union, pursuant to pre-election promise and the mandate of the Act, that petitioner's favor had been withdrawn from the Association. As long as employees may reasonably entertain a belief that petitioner's favor can be won by abandoning the Union for the Association, they will not be free to exercise the rights guaranteed to them by § 7. If the Board has reasonable ground to believe that such a situation exists, it may direct the employer to employ whatever means it regards as reasonable to bring home to the employees that, as far as their employer is concerned, they are entirely free to exercise all the rights guaranteed in § 7. The fact that even here petitioner seeks to justify its

refusal to enter into a written contract, in part, upon the ground that a large proportion of its employees voted for the Association, indicates that it still accords the Association recognition in violation of the Act and shows that the Board did not abuse its discretion in directing the disestablishment of the Association. See National Labor Relations Board v. Falk Corporation (decided January 2, 1940), — U. S. —, 60 S. Ct. 307; National Labor Relations Board v. Greyhound Lines, 303 U. S. 261; National Labor Relations Board v. Newport News Shipbuilding and Dry Dock Co. (decided December 4, 1939), — U. S. —, 60 S. Ct. 203; National Labor Relations Board v. Fansteel Metallurgical Corp., 306 U. S. 240. Cf. National Licorice Co. v. National Labor Relations Board (decided March 4, 1940), — U. S. —; Federal Communications Commission v. Pottsville Broadcasting Co. (decided January 29, 1940), — U. S. —.

Petitioner also attacks the Board's conclusion that it had engaged in unfair labor practices within the meaning of § 8 (5), by not bargaining in good faith with the Union, as shown by: (1) refusal to enter into a signed agreement with the Union embodying terms agreed upon; (2) withholding from the Union the essential status of an equal [fol. 1149] during the negotiations; (3) repudiation and change of the terms of the July 14 bulletin after they had been approved as final by persons represented to have authority to act for petitioner; (4) adoption of dilatory tactics, manifested particularly by Anderson's refusal to post the July 14 memorandum, by rewriting it and refusing to incorporate in the August 15 bulletin the agreed procedure for settling grievances, to the terms of which it had no objection.

We are of the opinion that there was substantial evidence to support the findings upon which the Board based its conclusion that petitioner had violated § 8 (5). And we think this is so irrespective of petitioner's refusal to enter into a written agreement.

Does § 8 (5) require the employer to embody terms agreed upon with a Union in a written contract?

The Seventh Circuit recently considered this problem in Inland Steel Company v. National Labor Relations Board (decided January 9, 1940), — F. (2d) —, and concluded that no written agreement is required by the Act under any circumstances. It construed the language of the Act

literally and rejected the historical argument that Congress must have intended that any understanding arrived at be embodied in a written agreement because such had long been the general practice and because Congress must have been familiar with the old Labor Board's practice of requiring written contracts under such circumstances.

The opposite conclusion was reached by the Second Circuit, in the case of Art Metals Construction Co. v. National Labor Relations Board (decided February 26, 1940), — F. (2d) —. Judge Hand, writing for the Court, said:

"The argument on this point rests upon the admitted truth that the act does not force the parties to come to any agreement at all; for, although an employer must honestly negotiate with his employees collectively, that is as far as he need go. But if, the argument runs, he is forced to make it a term of any oral agreement that it shall be put into writing, he loses that absolute freedom in negotiation [fol. 1150] which he had at common law, and which Congress meant to preserve to him. Inland Steel Company v. N. L. R. B., 108 Fed. (2) (C. C. A. 7). It is indeed true, and for that matter a truism, that a stipulation in an oral contract that it shall be put into writing is one of its terms, and that if an employer must put it in, he is not free pro tanto. But he is no longer wholly free anyway; before the act he was not obliged to bargain with his employees collectively; he was at liberty to refuse to negotiate with them at all, or otherwise than severally. The act impaired that freedom; it meant to give to the employees whatever advantage they would get from collective pressure upon their employer; and the question here is what are the fair implications of that grant. They should include whatever is reasonably appropriate to protect it, and no one can dispute that a permanent memorial of any negotiation which results in a bargain, is not only appropriate, but practically necessary, to its preservation; it is hardly necessary to observe that without it the fruits of the privilege are exposed to the sport of fugitive and biased recollection. The purpose of a contract is to define the promised performance, so that when it becomes due, the parties may know the extent to which the promisor is bound, and it is the merest casuistry to argue that the promisor's freedom to contract includes the opportunity to put in jeopardy the ascertainment of what he has agreed to do, or indeed whether he has agreed to anything at all. The freedom reserved to the employer

is freedom to refuse concessions in working conditions to his employees, and to exact concessions from them; it is not the freedom, once they have in fact agreed upon those conditions, to compromise the value of the whole proceeding, and probably make it nugatory."

The Fourth Circuit followed Judge Hand's reasoning in National Labor Relations Board v. Highland Park Manufacturing Co. (decided March 11, 1940), — F. (2d) —. [fol. 1151] We are in accord with the reasoning and the conclusions reached by the Second and Fourth Circuits and, therefore, approve the Board's conclusion that respondent violated § 8 (5) by not embodying the understandings reached in a signed agreement.

However, if the view of the Seventh Circuit were accepted, it does not follow that the Board's order is invalid. We are of the opinion that the order is more obviously justified by § 10 (c), which requires the Board, when it has found an employer guilty of an unfair labor practice, to serve an order "requiring such person to cease and desist from such unfair labor practice and to take such affirmative action, * * * as will effectuate the policies of this chapter."

The Act nowhere in terms confers upon the Board the power to require an employer to post any notice, yet its power in this respect is now well established. See National Labor Relations Board v. Greyhound Lines, supra. In National Labor Relations Board v. The Falk Corporation (decided on January 2, 1940), — U. S. —, an order to post notices promising to cease and desist was upheld.

Discussing the Board's power to require the posting of such notices, Mr. Justice Black said:

"The court also modified the Board's order by omitting the requirement that the notices to be posted in the plant contain a statement that the company would 'cease and desist' from its unlawful activities. As stated in the first opinion of the court below, the purpose of the Board in requiring the company to publish notices assuring its employees that it would 'cease and desist' had been 'to convey to the employees the knowledge of a guarantee of an unhampered right in the future to determine their own labor affiliations.' Knowledge on the part of the men that the company would cease and desist from hampering, interfering with and coercing them in selection of a bargaining

agent, which the Board found the company had done successfully in the past, was essential if the employees were [fol. 1152] to feel free to exercise their rights without incurring the company's disfavor. But the notices as permitted by the court's modifying order not only failed to assure the men that the company would cease its unlawful and coercive practices, but—backed with the prestige of a formal court order—told the men that Independent, while in terms disestablished for the time being, was still available for selection by the employees. Thus the modified notices neither renounced the company's unlawful practices nor promised their abandonment, and left as a candidate the Independent, toward which the unrenounced unlawful activities of the company had been directed. We think the plant notices as modified by the court's order fell far short of conveying 'to the employees the knowledge of a guarantee of an unhampered right in the future to determine their labor affiliations.' "

The employees' need of assurance probably always justifies an order to the employer to post notices that he will bargain collectively with a particular union, etc., and the Falk case makes it clear that under some circumstances he may be required to post a notice that he will cease and desist from unfair labor practices found by the Board, though it may be doubted whether the Court meant to lay down the rule that the posting of such a notice can be required in every case. The Board might abuse its discretion in this respect, but the Supreme Court saw no abuse in the Falk case.

Petitioner's refusal to execute a written agreement at the request of the Union may well have left the employees suspicious of its good faith and with a sense of insecurity that does not ordinarily exist when neither party has reasonable ground to doubt the other's good faith. We are of the opinion that the sense of insecurity engendered by petitioner's strange unwillingness to execute a written contract embodying terms that it would have its employees believe it had orally agreed to in good faith, required the Board to exercise the power conferred in § 10 (c). There was no abuse of discretion in the order as made. National Labor [fol. 1153] Relations Board v. Highland Park Mfg. Co., supra.

In view of the conclusion we have reached as to this mat-

ter, we deem it unnecessary to consider the other grounds enumerated above, upon which the Board based its conclusion that petitioner had violated § 8 (5).

Petitioner denies the Board's power to require it to post notices in the form ordered. We are of the opinion that the Board did not abuse its discretion in this respect. See National Labor Relations Board v. Falk Corp., supra. Cf. National Licorice Co. v. National Labor Relations Board, supra.

The order of the Board will be enforced.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1154] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 3, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsed on Cover:] Enter Earl F. Reed. File No. 44,403. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 73. H. J. Heinz Company, Petitioner, vs. National Labor Relations Board. Petition for a writ of certiorari and exhibit thereto. Filed May 9, 1940. Term No. 73 O. T. 1940.

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Supreme Court of the United States

OCTOBER TERM, ~~1940~~ 1939

NO. [redacted] 73

H. J. HEINZ COMPANY, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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Supreme Court of the United States

OCTOBER TERM, [redacted] 1939

NO. .....

H. J. HEINZ COMPANY, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

H. J. Heinz Company prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit, rendered on April 3, 1940, denying the petition of the petitioner, H. J. Heinz Company, to set aside an order of the National Labor Relations Board against the petitioner.

OPINIONS BELOW.

The findings of fact, conclusions of law and Order of the National Labor Relations Board (R. 217 to 250) are reported in 10 N. L. R. B. 963. The opinion of the Circuit Court of Appeals denying the petition of the petitioner to set aside said order is reported in .... F. (2d) .....

JURISDICTION.

The judgment or decree of the Circuit Court of Appeals was entered April 3, 1940. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10(e) of the National Labor Relations Act.

STATUTE INVOLVED.

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Supp. II, Title 29, Sections 151 *et seq.*) are printed in the appendix to this petition.

QUESTIONS PRESENTED.

1. Whether, under the provisions of the National Labor Relations Act, an employer which recognized the successful labor organization in an election conducted by the National Labor Relations Board, bargained collectively with it as the exclusive representative of employees for collective bargaining purposes, and reached an agreement with it concerning wages, hours, vacations, and other conditions of employment, which agreement was reduced to writing in the form of an official bulletin and posted on the employer's bulletin boards, with the consent of the Union, and is still in effect, committed a violation of Section 8(5) of the National Labor Relations Act by refusing to accede to the Union's demand that the agreement be embodied in a specific form of agreement bearing the signatures of the employer and the Union?

2. Whether, under the provisions of the National Labor Relations Act, the National Labor Relations

Board has the authority to require an employer to embody the terms of any agreement reached with a labor organization covering terms and conditions of employment in a written, signed contract with such labor organization, if requested by it to do so?

3. Whether an employer may be found guilty of an unfair labor practice on the basis of isolated acts and remarks of a few minor supervisory employees, where there is no evidence that the employer authorized or knew of such acts and remarks at the time they occurred and there is undisputed proof that as soon as such acts and remarks were brought to the employer's attention, it promptly repudiated them and forbade any repetition thereof by its supervisory employees, which instructions were strictly followed?

4. Whether the National Labor Relations Board abused its discretion in ordering the disestablishment of, and the withdrawal of recognition from the labor organization which lost the election described above, where, after said election, which was held over five months prior to the issuance of the complaint, the employer had no dealings whatsoever with said organization?

STATEMENT.

Pursuant to Section 10(b) of the National Labor Relations Act, the National Labor Relations Board (which is referred to in this petition as the "Board"), on October 26, 1937, issued a complaint against the petitioner (R. 7-10), alleging violations of the National Labor Relations Act, based upon a charge (R. 4, 5) filed with the Board, on May 27, 1937, by Canning & Pickle Workers, Local Union No. 325, affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America, American Federation of Labor (referred to in this petition as the "Union"), and an amended charge (R. 6) filed with the Board on October 4, 1937 by the Union. The petitioner filed an answer (R. 13-19) to the complaint on November 6, 1937, and a hearing was held before a Trial Examiner designated by the Board, beginning November 15, 1937 and ending November 26, 1937.

On April 9, 1938, the Board issued its Decision and Order (R. 97-123). Thereafter, petitioner filed a petition to set aside the Order of April 9, 1938, whereupon the Board on May 13, 1938, issued its order setting aside its previous order (R. 129). On July 18, 1938, the Board issued a document (R. 133-160) designated Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order, to which the petitioner, within the time prescribed by the Board's Rules, filed written exceptions (R. 162-209). On January 25, 1939, the Board issued its Decision and Order (R. 217-250), containing Findings of Fact, Conclusions of Law and an Order against the petitioner.

The Board's Order against petitioner (R. 248-250) directed petitioner to cease and desist from alleged conduct in violation of Sections 7, 8(1) and 8(5) of the

Act; disestablish Heinz Employees' Association, an independent labor organization composed of employees of the petitioner, (referred to herein as the "Association"); bargain collectively, at the request of, and with the Union; embody any understanding reached with the Union in a written, signed agreement if requested to do so by said Union; post notices in its plant that it will "cease and desist", "disestablish", and "bargain collectively" as aforesaid; and notify a representative of the Board of steps taken to comply with the Order. The Circuit Court of Appeals denied the petition of the petitioner to set this Order aside and granted enforcement to the Board.

The first two and main questions presented herein concern that part of the Order of the Board which requires petitioner to bargain collectively with the Union and *to embody any understanding reached with the Union in a written, signed agreement if requested to do so by the Union.*

The Union and the Association, after organizing activities commencing early in the year 1937, each claimed to represent a majority of the petitioner's employees.

As a result of negotiations, an agreement was reached providing, *inter alia,* that an election be held under the direction of the Board and that the petitioner would bargain with the successful organization.

The consent election, held on June 8, 1937, as provided for in Board's Exhibit No. 16, was won by the Union with a vote of 1079 out of 1930 votes cast (R. 583), and petitioner held the first of many collective bargaining meetings with representatives of the Union on June 17, 1937 (R. 584, 1053).

At this meeting, the Union presented a draft of a contract which embodied their demands (Board Exhibit No. 18, R. 55-60), and stated that they had authority to negotiate that contract, but if any departures were made therefrom, they would have to obtain the Union's approval (R. 1054).

Numerous meetings were held thereafter, at which wages were the principal topic of discussion. The Union demanded an increase in wages of twenty per cent. (R. 1053-1057) but the petitioner's officers informed the Union that a ten per cent. increase was the absolute limit to which the petitioner would go (R. 1115; 1057, 1121).

Upon several occasions during the course of negotiations prior to July 1, 1937, the matter of the form of the agreement had been discussed (R. 1058; 1121; 654, 655), and Kracik, the International Representative of the Union, indicated his willingness to enter into a "packing-house agreement," similar to that which the parent union had with packing-houses in the neighborhood of the petitioner's plant, and which took the form of a statement or bulletin to employees posted in the plant by the employer (R. 655; 1056; 1058; 1121). Kracik reiterated that position on at least one subsequent occasion (R. 654-656; 1059; 1121).

On July 1, 1937, the Union representatives agreed to submit to a vote of the Union membership the question whether a ten per cent. wage increase was acceptable (R. 1058), and that evening the Union voted to accept the ten per cent. wage increase, but not for a definite period, and, according to one of the Union negotiators, indicated that it would refuse to sign a contract with the petitioner (Respondent's Exhibit No. 2; R. 650, 651).

The next day the Union representatives reported the acceptance of the wage increase, and further negotiations that day led to agreement on other wage details, hours of employment and a vacation plan, all of which matters were made effective as of July 1, 1937, (R. 1059) by agreement.

Between July 2 and July 14, negotiations continued, principally between Wilner and Ebbert, attorneys for the Union and the petitioner, respectively, for the purpose of reducing the matters agreed upon to writing (R. 1060). Finally, a draft of a bulletin to be posted was agreed upon (R. 605), and the bulletin (Board Exhibit No. 22) was posted in petitioner's plant (R. 1063) by agreement of the petitioner and the Union (R. 605). At the hearing Wilner admitted that the agreement, as evidenced by the posted bulletin, was binding upon the petitioner and that the form of the agreement was important, from the Union's standpoint, only for *psychological* reasons (R. 619, 620).

The facts with reference to the third and fourth questions presented herein, viz., petitioner's alleged interference with organization activities, may be briefly stated as follows: Prior to the spring of 1937, there had never been any general labor organization in the petitioner's Pittsburgh factory (Decision and Order of the Board, R. 221). The petitioner had enjoyed a history of peaceful relations with its employees dating back to its founding in 1869 (Board Exhibit No. 14, R. 48-50).[1] There had therefore been no occasion for a schooling of the supervisory force in the role it should play in the event of an organization drive among the

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[1] This document is printed in the Record under the heading "Board Exhibit No. 15". But see pages 489 and 490 of the Record.

employees. The petitioner's supervisory force numbers about 116 persons (R. 738, 739). There is also a substantial number of persons who perform supervisory duties of a minor nature in addition to their other tasks of a non-supervisory nature (R. 763, 764). The petitioner employs approximately 2000 production and maintenance workers in its Pittsburgh factory (R. 762), a plant consisting of many separate buildings covering a large area (Board Exhibit No. 4, R. 30 at R. 33, 34; Board Exhibit No. 2, R. 23 at R. 28, 29).

Upon receiving complaint from the Union that there had been interference with the rights of the employees, the responsible officials of petitioner immediately took steps to enforce the observance by the supervisory staff of an attitude of strict neutrality and non-interference (R. 1030-1032; 741), and the Union representatives and members were assured that it was the management's desire to remain neutral with respect to organization (R. 1031, 1032).

Further instructions to the same effect were given to the supervisory staff by Howard Heinz (R. 742) the peitioner's President, and by Heinrich (R. 743; Respondent's Exhibit No. 3, R. 85, 86), the petitoner's superintendent. That these instructions were complied with appears from the fact that although the complaint in this case was not filed until late October 1937, and the hearing not held until November 1937, the Board's decision contains no finding that the petitioner in any manner interfered with its employees after the early days of the organization drive months before. It is also significant that the acts complained of occurred *prior* to the election which the Union won, so that apparently they could have had but little effect on the few employees who were said to have been the object of the acts.

The Board found that a total of eleven members of the petitioner's supervisory force of 116 persons had committed acts or made statements derogatory to the Union. At most, these amounted to hardly more than expressions of preference between the two unions. There was no allegation or proof of discriminatory discharges, financial support or other influences. Furthermore, ignoring the fact that such activities were wholly unauthorized and were promptly repudiated by petitioner, upon notice, and that instructions to maintain strict neutrality have been complied with, the Board ordered petitioner to cease and desist from dominating or interfering with the formation or administration of the Association.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

1. In holding that petitioner violated Section 8(5) of the National Labor Relations Act by not embodying the understanding reached with the Union in a signed agreement;

2. In holding that the Order of the National Labor Relations Board directing the signing of an agreement is justified by Section 10(c) of the National Labor Relations Act;

3. In holding that there was substantial evidence to support the Board's finding that petitioner violated Sections 7, 8(1) and 8(2) of the National Labor Relations Act;

4. In failing to hold that petitioner, through its responsible executives, assured officers and members of the Union that petitioner's attitude toward the organization of its employees into labor unions was one of strict neutrality;

5. In holding that petitioner was responsible for the conduct of a few minor, supervisory employees which petitioner neither authorized nor ratified but on the contrary repudiated;

6. In holding that petitioner still accords the Association recognition in violation of the National Labor Relations Act;

7. In holding that disestablishment of the Association is necessary to assure petitioner's employees that they are free to exercise the rights guaranteed to them by Section 7 of the National Labor Relations Act;

8. In holding that there was substantial evidence to support the finding of the Board that petitioner violated Section 8(5) of the National Labor Relations Act irrespective of petitioner's refusal to enter into a written, signed agreement with the Union;

9. In failing to hold that the bulletin containing the understanding reached between petitioner and the Union was binding upon petitioner and so considered to be by the Union;

10. In holding that a sense of insecurity existed among petitioner's employees, engendered by petitioner's refusal to execute a contract in the form desired by the Union, which required the Board to command petitioner to executed such a contract.

REASONS FOR GRANTING WRIT.

I.

The Decision of the Circuit Court of Appeals Is in Conflict With Decisions of the Circuit Court of Appeals for the Seventh Circuit.

The decision of which review is sought holds that Section 8(5) of the National Labor Relations Act requires an employer to embody terms agreed upon with a union in a formal written contract if the union insists upon such a contract. The question was squarely presented to the Court and its holding thereon clearly appears from the following quotation from the opinion (R. 1149-1151):

> "Does § 8(5) require the employer to embody terms agreed upon with a Union in a written contract? * * *
>
> "We are in accord with the reasoning and the conclusions reached by the Second and Fourth Circuits and, therefore, approve the Board's conclusion that respondent violated § 8(5) by not embodying the understandings reached in a signed agreement."

In holding that Section 8(5) of the Act requires the signing of a contract embodying terms agreed upon between an employer and a union, the decision is in direct conflict with the decision of the Seventh Circuit Court of Appeals, in *Inland Steel Company v. National Labor Relations Board*, 109 F. (2d) 9 (decided January 9, 1940), in which case it was held that no written agreement is required by the National Labor Relations Act under any circumstances. In that case it was said (pages 24, 25):

> "We are unable to agree with the argument that the Act imposes a duty upon an employer ap-

plicable only in some cases. We should think such a construction of the Statute might well endanger its validity. When the concession is made, as it is, that the matter of a signed agreement is dependent upon a request by the employees or their representatives, and may be waived, we think it is clear that the matter becomes a subject of bargaining the same as any other request or demand. The Statute is barren of any express language requiring a signed agreement and it must be held that no such agreement is required unless we are authorized to read into the term 'collective bargaining' the condition that all agreements, not some, must be reduced to writing."

* * * * * *

"Notwithstanding that the Act does not 'compel any agreement whatever' the petitioner was found to have violated Section 8 (5) of the Act because of its refusal to enter into a signed agreement with SWOC, and was affirmatively directed to embody any agreement reached in a signed agreement. We do not think that the Act contemplates such a requirement and if we are right in this conclusion, it follows that the order of the Board in this respect is invalid."

The Court below, in its opinion, recognized the conflict between its decision and the decision of the Seventh Circuit in the *Inland* case (R. 1149), but preferred to follow decisions of the Second and Fourth Circuits, likewise in conflict with the *Inland* case, *supra,* on this point, such cases being *Art Metals Construction Company v. National Labor Relations Board,* 110 F. (2d) 148 (2 Cir., decided February 26, 1940), (by a divided Court), and *National Labor Relations Board v. Highland Park Manufacturing Company,* .... F. (2d) .... (4 Cir., decided March 11, 1940).

The decision of the Court below is likewise in conflict with another decision of the Circuit Court of Appeals for the Seventh Circuit in *Fort Wayne Corrugated Paper Company v. National Labor Relations Board,* .... F. (2d) .... (decided March 28, 1940), in which that Court re-affirmed its view as to the scope of Section 8(5) of the Act and refused to enforce the portion of the Board's Order requiring the employer to enter into a written contract with the union there involved.

The uncertainty resulting from this irreconcilable conflict should be resolved by a decision of this Court.

II.

The Decision of the Circuit Court of Appeals Is in Conflict With Decisions of the Circuit Courts of Appeal for the Second and Eighth Circuits.

The decision of the Court below holds that an employer may be found guilty of unfair labor practices because of isolated acts of a few minor supervisory employees although there was no finding that the employer had authorized, ratified or approved the acts and on the contrary there was convincing and undisputed proof that the employer promptly disavowed such of the questioned conduct as was brought to its attention and took immediate and effective steps to prevent any recurrence. The holding of the Court upon this point will appear from the following language of the opinion (R. 1146, 1147):

> "Petitioner also contends that, even, if its supervisory employees did engage in the aforesaid activities, there is no evidence that it expressly authorized or ratified those acts; on the contrary, when they were brought to its attention, it claims that all foremen were instructed to remain neutral

> and not discriminate against any employee because of union activities. * * * There was abundant evidence that the ordinary employees feared the disfavor of those from whom they were accustomed to taking orders. Since they were justified in believing that these supervisory employees were acting as petitioner's representatives, petitioner is responsible for what they did. (Citing cases)
>
> "We are of the opinion that petitioner violated §§ 7, 8(1) and 8(2) of the Act, *though there may have been neither express authorization nor ratification.*" (Emphasis ours)

This language indicates a complete disregard for established principles of agency. In the first place, it attaches a quasi-criminal responsibility on the principal for acts of an agent of limited powers, without any proof that the acts were either authorized or approved. In the second place, it presumes to rest responsibility for a violation of the law upon the basis of *apparent* authority, although the doctrine of apparent authority is based entirely upon principles of estoppel and assumes that there is no actual or implied authority. In the third place, it overlooks the fact that a definite repudiation of an agent's unauthorized acts is always sufficient to exonerate the principal of responsibility. In addition, from a factual standpoint the Court's holding ignores the undisputed fact that the alleged "intimidating" activities occurred prior to the election which the Union won and therefore must have had little effect. It is indeed a novel doctrine that a person may violate the law merely because others think or believe that the acts of his agent have been sanctioned by him, where there is proof that no such sanction existed.

In so holding, the decision, as to the actions of the more minor supervisory employees for whose conduct

the petitioner has been penalized, is clearly in conflict with the decisions of the Circuit Court of Appeals for the Second Circuit in *Ballston-Stillwater Knitting Co., Inc. v. National Labor Relations Board,* 98 F. (2d) 758, and of the Circuit Court of Appeals for the Eighth Circuit in *Cupples Company, Manufacturers v. National Labor Relations Board,* 106 F. (2d) 100.

In the *Ballston-Stillwater* case, *supra,* the Board had charged the employer, as here, with responsibility for actions of certain minor supervisors. The Second Circuit refused to so hold, saying (at pages 761, 762):

> "The Board found that Pitney, Baker and Jones transmitted orders from the superintendent and reported back to him concerning the work and behavior of employees, but it made no finding as to their authority to hire or discharge. Nevertheless, it imputed their conduct to the petitioner. *We do not think it follows from the characterization of these employees as 'supervisory' that liability for their acts should be visited upon petitioner.*" (Emphasis ours)

Similarly in the *Cupples* case, *supra,* the Board had castigated that employer for actions of an employee considered by other workers to be a supervisor, a holding repeated by the Board in the instant case and sustained by the Court below. The Eighth Circuit, however, held otherwise and said, page 115:

> "What her fellow-employees of the match department may have assumed her authority to be, and what she may have represented it to be we regard as unimportant in so far as the company is concerned, *since there is no proof that her acts which are complained of were done at its direction or with its knowledge or consent.* It would be strange if the efforts of the employees of the petitioner to organ-

ize and to select representatives for collective bargaining could be utterly frustrated and destroyed through attributing the acts of one of their number —wh , so far as the record shows, was eligible to membership in both the Association and the Matchworker's Union—to the employer, without any showing that the employer had ever authorized, consented to, or was aware of such acts." (Emphasis ours)

The question of an employer's liability under the Act for alleged violations by his employees is primarily a question of the law of agency. The Circuit Court of Appeals for the Eighth Circuit, in contrast with the action of the Court below, applied principles of agency to the decision of the question before it and said (at pages 114, 115 of 106 F. (2d)):

"It is elementary that a principal is only bound by the acts of an agent which are within the scope of the actual, implied or apparent authority of that agent. Miss Weitzel had no actual authority from the Company to encourage or discourage memberships in labor organizations. There is no evidence which would support a finding that she had implied authority to do so. Implied authority is nothing more than actual authority circumstantially proved. Koivisto v. Bankers' & Merchants' Fire Ins. Co., 148 Minn. 255, 181 N. W. 580; 2 C. J. 435; Hall v. Union Indemnity Co., 8 Cir., 61 F. 2d 85, 92. So far as her apparent authority is concerned: 'It is only acts within the scope of the apparent authority with which the principal clothes the agent, not those within the scope of the apparent authority with which the agent wrongfully clothes himself, without the assent or knowledge of his principal, that are binding upon the latter.' Chicago, St. P., M. & O.

Ry. Co. v. Bryant, 8 Cir., 65 F. 969, 973. See, also, Hall v. Union Indemnity Co., 8 Cir., supra, 61 F. 2d at page 91".

The question of an employer's responsibility under the National Labor Relations Act for unauthorized acts of employes is a vital one, and uncertainty resulting from the aforementioned conflict in the decisions thereon should be resolved by a decision of this Court.

III.

The Circuit Court of Appeals Has Decided Federal Questions in a Way Probably in Conflict With Applicable Decisions of This Court.

In two respects the decision of the court below upon federal questions is probably in conflict with applicable decisions of this Court. Those questions are (a) Whether the scope of the duty of an employer to bargain collectively, imposed by Section 8(5) of the National Labor Relations Act, includes the duty to embody an agreement reached as a result of such bargaining in a written, signed contract; and (b) Whether an employer subject to the National Labor Relations Act can be held to have violated Sections 7, 8(1) and 8(2) of said Act through actions of employees which were unauthorized and never ratified by the employer.

On the first question, we respectfully submit that this Court, in sustaining the constitutionality of the National Labor Relations Act in *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, did so, in part at least, upon the ground that the Act does not compel agreements between employers and employees and does not prevent employers from refusing to make collective contracts. The following language

from the opinion in that case is pertinent here (301 U. S. 1, at 45):

> "The act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer 'from refusing to make a collective contract and hiring individuals on whatever terms' the employer 'may by unilateral action determine.' The act expressly provides in section 9(a) that any individual employee or a group of employees shall have the right at any time to present grievances to their employer. The theory of the act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the act in itself does not attempt to compel. * * *"

Although the specific question of the instant case was not then before the Court, surely the principle enunciated there is applicable to the present case. If an employer may lawfully refuse to make a collective contract with the representative of his employees, it must follow that he, in making such a contract, may refuse to evidence the contract in the particular form and manner desired by the employee representative. This is so even though it be admitted that the Act requires the reduction to writing of agreements reached through collective bargaining. *The question here is not whether such an agreement must be put in writing, but whether an employer may be compelled to accept the Union's demands as to the form in which the agreement is to be written.*

We respectfully submit that the form in which agreements might be put was no concern of Congress and cannot be any proper concern of the Board. The policy of Congress expressed by the National Labor Re-

lations Act delimits and defines the policy of the Board in enforcing the Act. The policy of Congress was and is to insure to employees all the lawful advantages of collective pressure upon their employer through collective bargaining and other collective action in order to secure for themselves the best obtainable terms and conditions of employment. Congress, and this Court in sustaining the law upon constitutional grounds, recognized the fact that the government could go no further than to attempt to equalize the bargaining power of employers and employees and to set up certain safeguards so that the attempt at equalization could not be jeopardized by specified types of conduct by employers. To say that an employer, having bargained collectively in accordance with the Act, and having agreed upon terms and conditions of employment, violates the Act *unless he agrees* to sign a contract in the form desired by the representative of his employees, is to say that the Act compels agreements between employers and employees. The Court below so held, and its decision is thus contrary to and in conflict with the decision of this Court in the *Jones & Laughlin* case, *supra*.

The second respect in which the decision of the Circuit Court of Appeals is probably in conflict with applicable decisions of this Court is its holding that the petitioner violated the Act through conduct of its employees, even though it neither authorized nor ratified the actions of its employees. In a case such as this, where the employer has a large supervisory force which carries out the policies and orders formulated and issued by the responsible executive officers, the answer to the question as to whether the employer violated the Act through conduct of employees who acted without authority from it, should depend upon whether the employee whose conduct is under consideration was one who determined the employer's policy in connection with the matters in-

volved. Such a test was sanctioned by this Court in *National Labor Relations Board v. Sands Manufacturing Company,* 306 U. S. 332. In that case, one of the questions before the Court was whether the discharge of certain persons by the employer was in violation of the Act. The Board, in holding that the discharge was discriminatory, had relied upon the statements made by the superintendent of the plant and a shipping clerk. This Court held that there was insufficient evidence to sustain the finding of the Board, saying (at page 342):

> "* * * Neither of the men who are quoted held such a position that his statements are evidence of the company's policy * * *."

The test approved by this Court is the only one practicable, especially where there are many employees who exercise supervisory, as distinguished from management, functions, unless, under the National labor Relations Act, employers are to be saddled with liability without fault.

The decision of the Court below is completely out of harmony with the law of agency in holding petitioner liable for conduct of employees in the absence of any proof that the employees were authorized to speak or act for the petitioner, and in further absence of proof of any ratification of such conduct by the petitioner. The rule applicable here was stated by this Court as early as 1827, in *The General Interest Insurance Company v. Ruggles,* 12 Wheat. 408, 6 L. Ed. 674, where it was said (12 Wheat. 412, 413):

> "* * * He is not to be considered as the general agent of the owner for all purposes whatsoever, that may have connection with the voyage. He is a special agent for navigating the vessel, and can neither bind nor prejudice his principal, by any act

not coming properly within the scope and object of such employment. *Unless the powers of agents are thus limited, no man could be safe in the transaction of any business through the agency of another. * * * It is a general rule, applicable to agencies of every description, that the agent cannot bind his principal except in matters coming within the scope of his authority; * * *"* (Emphasis ours)

The policy underlying the rule as pronounced by this Court is firmly entrenched in the law and is fully justified by principles of fair dealing. Surely, no tribunal should hold a litigant guilty of violating the law through the acts of an agent, unless he had given his agent authority to commit the violation, or, thereafter, had ratified the acts of his agent in an unequivocal manner. In the instant case, there was no proof that petitioner had authorized or ratified the acts complained of, and, on the contrary, it was definitely shown that petitioner had disavowed such conduct and had taken immediate and positive steps satisfactory to the Union, to prevent any possible recurrence thereof.

IV.

The Primary Question Presented Is of Great Public Importance and Should Be Decided by This Court.

At the time of the argument of this case before the Court below there were pending before the Circuit Courts of Appeal, in addition to the instant case, four other cases[2] each involving the question as to whether the

---

[2] *Inland Steel Co. v. National Labor Relations Board* (C. C. A. 7); *Art Metals Construction Co. v. National Labor Relations Board* (C. C. A. 2); *National Labor Relations Board v. Sunshine Mining Co.* (C. C. A. 9); *Bethlehem Shipbuilding Corp., Ltd. and Bethlehem Steel Co. v. National Labor Relations Board* (C. C. A. 1).

Board has authority under the Act to require an employer to enter into a written signed contract with a labor organization. The cases cited in the margin have been decided with the exception of *Bethlehem Shipbuilding Corp., Ltd., and Bethlehem Steel Co. v. National Labor Relations Board* which is still pending in the First Circuit at the time of preparation of this petition.

We have already indicated that there have been at least two other decisions by the Circuit Courts of Appeal on the question, viz., *Fort Wayne Corrugated Paper Co. v. National Labor Relations Board, supra,* and *National Labor Relations Board v. Highland Park Manufacturing Co., supra.*

The frequency with which the question arises is well demonstrated by the fact that in the brief period from May 12, 1939 to September 6, 1939, the Board issued at least thirteen orders[3] in which respondent employers were directed to bargain collectively with labor organizations and to embody the terms of any understandings reached in written signed agreements if requested to do so by the respective labor organizations.

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[3] The orders referred to were issued in the following cases: *Matter of Chesapeake Shoe Manufacturing Co., et al.,* 12 N. L. R. B. 832; *Matter of Harry Schwartz Yarn Co., Inc., et al.,* 12 N. L. R. B. 1139; *Matter of Highland Park Manufacturing Co., et al.,* 12 N. L. R. B. 1238; *Matter of Art Metal Construction Company, et al.,* 12 N. L. R. B. 1307; *Matter of Nathan Chesler, et al.,* 13 N. L. R. B. 1; *Matter of Holston Manufacturing Company, et al.,* 13 N. L. R. B. 783; *Matter of Express Publishing Company, et al.,* 13 N. L. R. B. 1213; *Matter of Fort Wayne Corrugated Paper Company, et al.,* 14 N. L. R. B. 1; *Matter of Bussmann Manufacturing Company, et al.,* 14 N. L. R. B. 322; *Matter of Dallas Cartage Company, et al.,* 14 N. L. R. B. 411; *Matter of Stewart Die Casting Corporation, et al.,* 14 N. L. R. B. 872; *Matter of The M. H. Ritzwoller Company, et al.,* 15 N. L. R. B. 15, and *Matter of Independent Pneumatic Tool Co., et al.,* 15 N. L. R. B. 106.

The petitioner in this case had contracts with other unions which were not reduced to the form of a written contract such as the Union demanded in this case, and the evidence shows the reasons given by the petitioner for not wanting this type of contract. A considerable percentage of the union contracts existing in the country today are oral contracts or contracts represented by an exchange of letters or a posted bulletin. If the National Labor Relations Act is to be interpreted as requiring a written contract signed by both parties, in the form desired by the Union, it amounts to compulsion of an employer and will impede, rather than help the solution of collective bargaining problems.

The Congressional debates indicate that the Congress did not intend the Act to compel the signing of any labor agreement. The decision of the Second Circuit Court of Appeals in the *Art Metals Construction Company* case, *supra,* was by a divided court, and upon such a vital and fundamental question the proper construction of the Act should be uniform throughout the country. In the light of the many-sided conflicts existing in the various circuits, uniformity can be achieved only through a decision by this Court on that question.

Conclusion.

WHEREFORE it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Sixth Circuit should be granted.

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APPENDIX.

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. II., Title 29, Sec. 151, *et seq.*) are as follows:

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6(a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

* * * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

Sec. 10.

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the

Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

NO. 73.

H. J. HEINZ COMPANY, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

BRIEF FOR H. J. HEINZ COMPANY.

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BRIEF FOR H. J. HEINZ COMPANY.

OPINION BELOW.

The opinion of the United States Circuit Court of Appeals for the Sixth Circuit (R. 1140-1152) is reported in 110 F. (2d) 843. The decision of the respondent, National Labor Relations Board, appears in the record at pages 197-229.

JURISDICTION.

The decree of the United States Court of Appeals for the Sixth Circuit, denying the petition of H. J. Heinz Company to set aside the Order of the National Labor Relations Board, and granting the petition of the National Labor Relations Board for the enforcement of its Order, was entered on April 3, 1940. The petitioner filed its Petition for Writ of Certiorari on May 9, 1940, which was granted on June 3, 1940. This Court's jurisdiction is based upon Section 240(a) of the Judicial Code, as amended, and Section 10(e) of the National Labor Relations Act.

STATUTE INVOLVED.

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449; 29 U. S. C. A. Section 151, *et seq.*), are printed in the appendix to this Brief.

QUESTIONS PRESENTED.

1. Whether, under the provisions of the National Labor Relations Act, an employer which recognized the successful labor organization in an election conducted by the National Labor Relations Board, bargained collectively with it as the exclusive representative of employees for collective bargaining purposes, and reached an agreement with it concerning wages, hours, vacations, and other conditions of employment, which agreement was reduced to writing in the form of an official bulletin and posted on the employer's bulletin boards, with the consent of the Union, and is still in effect, committed a violation of Section 8(5) of the National Labor Relations Act by refusing to accede t the Union's demand that the agreement be embodied in a specific form of agreement bearing the signatures of the employer and the Union?

2. Whether, under the provisions of the National Labor Relations Act, the National Labor Relations Board has the authority to require an employer to embody the terms of any agreement reached with a labor organization, covering terms and conditions of employment, in a written, signed contract with such labor organization, if requested by it to do so?

3. Whether an employer may be found guilty of an unfair labor practice on the basis of isolated acts and remarks of a few minor supervisory employees, where there is no evidence that the employer authorized or knew of such acts and remarks at the time they occurred and there is undisputed proof that as soon as such acts and remarks were brought to the employer's attention, it promptly repudiated them and forbade any repetition thereof by its supervisory employees, which instructions were strictly followed?

STATEMENT OF THE CASE.

The National Labor Relations Board, (hereinafter called the "Board"), has, by its Order, directed the petitioner (hereinafter referred to as the petitioner or as the "Company") to cease and desist from alleged violations of Section 7, 8(1), 8(2) and 8(5) of the Act; to disestablish the Heinz Employees' Association, a labor organization of employees of the petitioner (hereinafter called the "Association"); to bargain collectively with the Canning & Pickle Workers, Local Union No. 325 (hereinafter called the "Union"); to embody any understanding reached with the Union in a written, *signed* agreement, if requested to do so by the Union; to post notices in its plant that it will thus "cease and desist", "disestablish", and "bargain collectively"; and to notify a representative of the Board of steps taken to comply with the Order.

The petitioner herein seeks a review of the decision of the Court of Appeals for the Sixth Circuit, which decision denied petitioner's petition to set aside the Order of the Board and granted enforcement thereof.

Our argument in this Brief will be divided into two parts, corresponding to the two principal questions presented by this appeal. In the interests of clarity, the detailed facts relating to each of these questions will be deferred until the argument. In this statement only the general factual situation will be presented.

The two rival labor organizations involved in this case, *viz.*, the Union and the Association, began drives to organize the petitioner's employees early in the year 1937. Each organization demanded recognition as representing a majority of the petitioner's employees. The petitioner proposed that an election be held to determine

which organization represented a majority of the employees, but the Union would not agree and called a strike on May 24, 1937, without any notice or warning to the petitioner or the employees (R. 1034). After some conferences, which will be discussed later, and through the intervention of conciliation experts from the Federal and State Departments of Labor, an agreement settling the strike was reached, which agreement was signed by the Union, the Association and the petitioner (R. 1047, 1048; Board's Exhibit "16", R. 48, 49; 566). By the terms of this agreement, an election was to be held under the direction of the Board and the petitioner agreed to recognize and bargain with the successful organization. Sometime prior to the signing of this agreement (Board's Exhibit "16"), the Union had filed charges with the Board attacking the legality of the Association. The petitioner and the Association were not notified of the nature of the charges, but so that the Union might not be prejudiced in the event it lost the election, a stipulation (Board's Exhibit "17", R. 50; 566) concerning the charges was signed at the time of the election agreement. This purpose was so stated by Dewey, a conciliator for the United States Department of Labor, and by Porter, an attorney for the Board, who prepared the stipulation (R. 1049).

The consent election was held on June 8, 1937, as provided in Board's Exhibit "16", (R. 48, 49; 566) and was won by the Union with a vote of 1079 out of 1930 votes cast,[1] and on June 17, 1937, as required by the election agreement, the petitioner held the first of many collective bargaining meetings with representatives of the Union (R. 572; 1052).

1. In the opinion of the Court below, at page 1142 of the Record, it is stated that the Union received 1079 of the 1882 votes cast. The statement is undoubtedly the result of an inadvertent error in the preparation of the opinion inasmuch as the 45 challenged votes and the 3 void votes actually were cast.

At this first meeting, the Union negotiators presented a proposed contract embodying their demands (Board's Exhibit "18", R. 50-55; 573), and stated that while they had authority to negotiate a contract in that form, if any departures were made therefrom, it would be necessary to obtain the Union's approval (R. 1053). Two of petitioner's executives, who acted for the petitioner in the earlier negotiations, then stated that they represented the petitioner's Board of Directors and would have to refer to the Directors for approval of their acts (R. 1053; 1122).

Numerous meetings were held thereafter, at which wages were the principal topic of discussion, the Union having demanded an increase in wages of 20% (R. 1053-1057). At the suggestion of Wilner, attorney for the Union, Anderson, a vice president of the petitioner, attended one meeting of the negotiators on June 28 (R. 1056, 1057). The negotiations up to that point were orally reviewed for his benefit[2] and then Anderson stated that the situation had been reported to him by Riley and Shinabarger, the two officials who had negotiated for petitioner, (R. 1056; 1115; 1122); that everything Riley and Shinabarger had done so far had had the approval of the directors, and that since a 10% increase was the limit to which the petitioner could go on the matter of wages, the Union could take it or leave it (R. 1115; 1056; 1122). *He did not say, despite the unsupported findings of the Board, that Riley and Shinabarger had full authority to act for the petitioner* (R. 1116; 1056; 1122).

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2. The Court below, in its opinion at page 1143 of the record, as well as the Board, seems to consider Anderson's silence throughout the major portion of the meeting as improper. The truth of the matter, however, is that at the meeting a review of all the negotiations up to that point was read to those present (R. 1056; 1115; 1122), after which Anderson's comment was asked for by Wilner (R. 582) and was freely made.

Upon several occasions during the course of negotiations prior to the meeting of July 1, 1937, which is hereinafter referred to, Riley and Shinabarger had discussed the matter of the form of the agreement with Kracik, International Representative of the Union, in the presence of other Union representatives (R. 1058; 1122; 643-645). Kracik had indicated his willingness to enter into a "packing-house agreement" similar to that which the parent union had with packing-houses in the neighborhood of the petitioner's plant, and which took the form of a statement or bulletin to employees posted in the plant by the employer (R. 645; 1055; 1058; 1122).

The next meeting between the negotiators, following the meeting attended by Anderson, was held on July 1 (R. 1057). The Union representatives agreed to submit to a vote of the membership the question of the acceptance of the 10% wage increase offered by petitioner (R. 1058). After the Union representatives had left the meeting to carry the question to the members, Riley and Shinabarger, in comparing notes, realized that the Union representatives might not have understood that the petitioner did not intend to sign an agreement in the form first submitted by the Union, (R. 1058; 1065; 1121, 1122). To prevent any misapprehension on this point, Riley and Shinabarger attempted to recall the Union representatives (R. 1058; 1121, 1122). Kracik returned alone, and the petitioner's representatives stated to him that while the petitioner did not want to sign the contract tendered by the Union, it would integrate the agreement in official bulletins posted in the plant. Kracik indicated that this procedure was entirely satisfactory to him (R. 644, 645; 1058; 1122). That night the Union voted to accept the 10% wage increase, but not for a definite period, and, according to one of the Union's principal advisers and negotiators, went on record as

refusing to sign any contract with the petitioner (Respondent's Exhibit "2", R. 76-78; 640; 638, 639).

The next day the Union representatives reported the acceptance of the wage increase, and further negotiations that day led to agreement on other wage details, hours of employment, and a vacation plan, all of which matters were by agreement made effective as of July 1, 1937 (R. 1058). At this meeting Wilner was the only representative of the Union to indicate any disapproval of the petitioner's position with reference to the form of the agreement (R. 1059).

Between July 2 and July 14, conferences were held between the parties' attorneys, for the purpose of reducing the agreement to writing (R. 1060). One point, however, had not been settled between the negotiators, viz., the exemption, from overtime provisions, of work on perishable and seasonal goods (R. 1059). The draft of the bulletin discussed at the July 14 meeting (Board's Exhibit "20", R. 60-65; 588) contained a recital that the petitioner would not pay overtime for work on perishables and that the Union did not agree to that exemption. Riley, at the close of the meeting, stated that the bulletin would be posted if he and Shinabarger could obtain approval of it (R. 1060). The matter was then referred to Anderson and he objected to the failure to dispose of the overtime question, to the length of the bulletin, and to the complicated detail of the provisions relating to the handling of grievances. He also announced that he wanted to discuss the bulletin with some of the other directors (R. 1116, 1117; 1061, 1062).

Thereafter, another draft was prepared (Board's Exhibit "21", R. 65-68; 593) and finally, after additional negotiations (R. 593, 594), the bulletin (Board's Exhibit "22", R. 68-71; 594) was agreed to by the

parties and was posted on some thirty bulletin boards in the petitioner's plant (R. 1062, 1063) as the statement of employment conditions agreed to by the petitioner and the Union (R. 594). Despite the agreement and the announcement to the employees of its terms, a few days later the Union declared its disapproval of the form in which the agreement was evidenced and stated that in its opinion the form preferred by petitioner was in violation of the Act (Board's Exhibit "23", R. 71; 595). At the hearing, Wilner admitted in his testimony that the agreement as evidenced by the posted bulletin was binding upon the petitioner and that the *form* of the agreement was important, from the Union's standpoint, only for *psychological* (or "promotional") reasons (R. 608, 609).

The facts thus related of course concern the first of the two questions at issue on this appeal, viz., the question of the alleged refusal to bargain. The facts which are involved in the second question, viz., the petitioner's responsibility for conduct and remarks of supervisory employees, will be reviewed, for the sake of clarity, in the argument on that issue. However, it is proper to point out, at this point, that these facts can be reduced to a few simple propositions. The petitioner has been found guilty of violations of Sections 8(1) and 8(2) of the Act upon the basis of alleged acts and remarks of foremen, sub-foremen and straw bosses, which might be construed as partial to the Association and disparaging of the Union. These acts and remarks were of a casual, isolated nature and were indulged in, if at all, by only a few of petitioner's employees. They were stimulated by the heat and controversy of rival organization drives and all of them occurred *prior* to the strike and the election. Moreover, it is clear that none of the petitioner's executives or other responsible officials authorized, approved or ratified

them. On the contrary, as soon as the petitioner's officers were notified of the alleged improprieties, they promptly took steps to prevent any such acts or remarks on the part of the supervisory force. The Union itself, it may be added, indicated that it was satisfied with the action which the petitioner took.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

1. In holding that petitioner violated Section 8(5) of the National Labor Relations Act by not embodying in a formal signed agreement the agreement which was reached with the Union and which has been in effect for more than three years;

2. In holding that the Order of the National Labor Relations Board requiring an employer to cancel an existing agreement with the Union and to negotiate and sign a new agreement is justified by Section 10(c) of the National Labor Relations Act;

3. In holding that there was substantial evidence to support the Board's finding that petitioner violated Sections 7, 8(1) and 8(2) of the National Labor Relations Act;

4. In failing to hold that petitioner, through its responsible executives, assured officers and members of the Union that petitioner's attitude toward the organization and other collective activities of its employees was one of strict neutrality;

5. In holding that petitioner was responsible for the conduct and remarks of a few supervisory employees which petitioner neither authorized, approved nor ratified but on the contrary promptly repudiated;

6. In holding that petitioner still accords the Association recognition in violation of the National Labor Relations Act;

7. In holding that disestablishment of the Association is necessary to assure petitioner's employees that they are free to exercise the rights guaranteed to them by Section 7 of the National Labor Relations Act;

8. In holding that there was substantial evidence to support the finding of the Board that petitioner violated Section 8(5) of the National Labor Relations Act; and

9. In failing to hold that the bulletin containing the understanding reached between petitioner and the Union was binding upon petitioner and so considered to be by the Union.

SUMMARY OF ARGUMENT.

In order that the summary of our argument may be entirely clear, though brief, we combine with the following summary an analysis of the Board's Order against the petitioner. The Order (R. 228-229) is divided into two principal subdivisions, one of which is negative or injunctive in character, and the other affirmative. The affirmative portions of the Order (Subdivision 2) may be said to supplement and enforce the "cease and desist" directions (Subdivision 1). However, from the standpoint of substantive effect, the Order can be reduced to three principal parts, and our argument will be based upon this analysis of the Order.

I.

The first part of the Order, which is represented by Subdivisions 1(b) and 2(b), directs the petitioner, in effect, to bargain collectively with the Union and, *"if an understanding is reached,* [to] *embody said un-*

derstanding in a written signed agreement, if requested to do so" by the Union. In the negative portion of the Order, this direction is phrased as an order to cease and desist from refusing to bargain collectively with the Union as the exclusive representative of the employees in the "appropriate unit".

This first part of the Order represents the most important issue on this appeal. Section 8(5) of the Act makes it an unfair labor practice for an employer to refuse to bargain with the representative designated by the majority of his employees. The Board's Order, in substance, finds that this employer has committed an unfair labor practice, within the meaning of this Section, and therefore directs the petitioner not only to bargain with the Union, but also to enter into a *signed, written* agreement with the Union, if the Union desires that type of a contract. *Inasmuch as the record shows that the Union and the petitioner did enter into an agreement which has been reduced to writing, and is still in effect, this part of the Order is tantamount to a rescission of the existing agreement and a command to make a substitute contract.*

The Board bases its right to issue such an order upon its interpretation of the phrase "bargain collectively", that is, the Board holds that an employer must proceed according to the Board's conception of negotiation and must conclude such negotiation by entering into a formal written contract *signed* by both parties. The petitioner denies the validity of the Board's interpretation of the Act and submits that, by bargaining with the Union and by reducing the understanding to writing, the petitioner has fully complied with all of the obligations imposed upon it by Section 8(5) of the Act. The Board also seeks to justify the affirmative

aspect of its Order, by recourse to its power under Section 10(c) of the Act to issue such affirmative directions as it finds essential to promote the policy of the Act. However, before the Board may order either affirmative or negative relief, it must first find evidence that there has been a refusal to bargain within the prohibition of Section 8(5) of the statute, and petitioner respectfully submits that there is nothing in the record which in any way can be said to support a finding that the petitioner is guilty of a refusal to bargain with the Union. On the contrary, the record shows that the petitioner has gone beyond the process of bargaining, it has made an agreement which the Board cannot vitiate without perverting the objects of the Act.

II.

A.

The second part of the Order requires the petitioner to cease and desist from dominating or interfering with the administration of the Association (Subdivision 1(a)). Phrased in the affirmative (Subdivision (2(a)), the Order requires the petitioner (1) to withdraw recognition from the Association as the representative of its employees for collective bargaining purposes, and (2) to disestablish the Association as such representative. This portion of the Order is predicated upon Section 8(2) of the Act, which makes it an unfair labor practice for an employer to support or interfere with the formation or administration of a labor organization of his employees. The "cease and desist" aspect of the Order presents a simple issue: "Has the petitioner supported or interfered with the Association?" The Board has answered this question in the affirmative by finding support of the Association, based upon alleged tactics of certain minor supervisory employees in encouraging

the organization drive of the Association in its early stages. It will be conceded that there is no evidence in the record of any other support, such as the advancement of funds, the furnishing of facilities, and the like, or of any interference with the administration of the Association after its formation. The finding of support raises the second issue on this appeal, that is, *whether or not an employer is bound by isolated acts and statements of a few out of many supervisory employees, where it is shown that the responsible officials of the employer, far from approving and adopting such acts, promptly took steps to prevent them.*

The action of the Board in placing upon the petitioner responsibility for the conduct of unauthorized persons, ignores all principles of the law of agency, in that it makes such conduct binding without any proof or finding of either authorization or ratification, thus saddling the petitioner with liability without fault.

The affirmative subdivision of this part of the Order goes beyond the negative, in that it directs the petitioner to withdraw recognition from the Association and to disestablish it as the representative of its employees. To maintain and uphold this affirmative direction, the Board must not only show that the petitioner has supported and interfered with the Association; it should also demonstrate that the petitioner is recognizing it as a representative of its employees. This has not been and cannot be shown, as the petitioner has granted exclusive recognition to the Union, has dealt and is dealing with it, and has not recognized the Association as the representative of its employees since the consent election, which was held many months before the complaint in this case was issued.

B.

The third principal part of the Order (Subdivision 1(c)) is purely negative in character, in that it directs the petitioner to cease and desist from interfering with, restraining and coercing its employees in the exercise of their rights under the Act. To support this section of the Order, the Board must show that the petitioner has engaged in unfair labor practices within the meaning of Section 8(1) of the Act, which prohibits coercion and restraint of employees in the exercise of their rights under the Act. This portion of the Board's Order, it may be observed, presents substantially the same issue as the second part outlined above, in that the Board's finding of a violation of Section 8(1) is based, *not upon any charges of discrimination, unfair treatment, or the like,* but upon alleged acts of minor supervisory employees in attempting to persuade a few employees to refrain from supporting the Union.[3] Again, the issue is: "Is an employer bound by the isolated acts of minor supervisory employees, where it is shown that, as soon as such acts were brought to the employer's attention, it forthwith took steps to prevent their recurrence?" Upon the undisputed evidence in this case, which shows that the petitioner promptly and effectively took steps to prevent any unneutral conduct of its supervisory force, to the entire satisfaction of the Union, this Court should hold that the petitioner is not responsible for conduct of its supervisors which might be described as favoring the Association and disparaging the Union.

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3. We recognize that the Board consistently rules that violations of Sections 8(2) and 8(5) of the Act are *ipso facto* violations of 8(1), but, of course, if this Court should agree that the petitioner has not violated Sections 8(2) and 8(5), then only the alleged direct acts of interference would be in issue.

It therefore follows that the petitioner has neither dominated the Association nor interfered with its employees in the exercise of their rights under the Act.

It might also be observed that the Board's Order directs the petitioner to post certain notices in its Pittsburgh plant, publicly confessing violations of the Act, but inasmuch as the notice to be posted is, in substance, a statement of a compliance with the Order, this part of the Order must fall with the parts described above.

ARGUMENT.

I.

The Board's Order, Insofar as It Directs the Petitioner to Bargain With The Union and to Embody the Results of the Negotiation in a Written Signed Agreement, Is Not Within the Statutory Authority of the Board Under the Act and Is Therefore Invalid.

As we have observed, the Board has ordered the petitioner to bargain with the Union and to enter into a written, signed agreement with it. The two aspects of this part of the Order are clearly interdependent, because the Board's finding of a refusal to bargain is predicated upon the fact that the petitioner refused to enter into a written agreement signed by both parties. *Therefore if the petitioner was within its legal rights in taking this position, there was no refusal to bargain and this part of the Order must fall in its entirety.*[4]

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4. This interdependence of the direction to bargain and the direction to sign a contract is peculiar to the facts of this case, because, as

The question of the power or authority of the Board to require the petitioner to enter into a written, signed agreement with the Union at its request, is of course a question of law. However, we believe that we should fully state the facts with respect to the alleged refusal to bargain, because the facts of this particular case will provide convincing practical, as well as legal, reasons for holding that the Act does not require a written, signed agreement. Moreover, the facts will serve to point out the extensive and extravagant character of the Board's command, for, despite its protestations, the Board has not simply directed the petitioner to bargain and sign a contract; *it has usurped the right to weigh the adequacy of the bargain and it has in effect ordered the petitioner to rescind an agreement which is now in effect and to substitute something new.* It has ordered the employer to retrace a process of negotiation which has been consummated in an agreement, which is admittedly legal and binding (R. 608; 1065). It is also to be emphasized that this is not a case where the parties have reached a deadlock or *impasse,* which might conceivably entitle the Board to question the employer's good faith in refusing to make concessions or counter-proposals. *An agreement was reached, under which the parties are still functioning, and the Board has arrogated to itself the power to question the employer's good faith because the*

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indicated, the parties did bargain and reach an agreement. The Board's finding of a refusal to bargain hinges upon the petitioner's unwillingness to sign a formal agreement. Other factors mentioned in the Board's decision, such as the length of the negotiations, the petitioner's refusal to grant a 20% increase, its alleged unwillingness to treat with the Union as an equal in bargaining power, etc., should be of no concern to the Board. They are factors in the case, but this is not because they aid the Board. On the contrary, they demolish the Board's argument by illustrating its far-reaching and unconstitutional implications.

Board does not like the form and shape of the final contract or the manner in which it was reached.

As we have indicated in our outline of the argument, the Order in the instant case is predicated, and *must* be predicated upon a conclusion that the petitioner has refused to bargain collectively with the Union as the exclusive representative of its employees. The conclusion of the Board to this effect is, in substance, based upon three arguments. The first argument seems to be that the petitioner should be compelled to sign such an agreement, because the Board suspects there were dilatory tactics in the negotiations leading to the agreement which was ultimately reached. The second argument apparently reaches a similar conclusion, upon the theory that the petitioner did not make sufficient concessions to the demands of the Union. The third argument is that a written contract should be signed, because, if the Union's name appears as a signatory to the contract, it will give the Union the psychological advantage of being the equal of the petitioner in prestige and bargaining power.

Although these three arguments are separately made in the Board's decision, they can be reduced to one general proposition. The Board's decision concedes that the parties reached an accord as to wages, hours and working conditions, which was embodied in a written bulletin to the employees, and which was accepted by the petitioner and the Union as a binding agreement. It is that agreement which has determined and now determines the standards of wages, hours, vacations and working conditions prevailing in the petitioner's plant. The Board, however, complains that the agreement should not have been embodied in written bulletins, but should have been committed to a *formal signed instrument*. Obviously, there is no legal difference between a

written bulletin and a signed specialty. *Both are binding and fully integrated contracts.* The only excuse for requiring the petitioner to make an agreement in a form different from that of its choice is apparently that the particular form proposed by the Union and the Board may result in some intangible, psychological advantage desired by the Union. This is the fundamental ground of the Board's decision, for it is clear that the finding of a refusal is predicated, *not upon any failure to meet and agree (for the Board concedes that the parties did so meet and agree) but upon the hypothesis that the Union has been deprived of the psychological advantage of contracting as an absolute equal.* Thus, the gravamen of the crime with which this petitioner is charged seems to be nothing more than an *offense to dignity.*

It is petitioner's theory that the National Labor Relations Act requires the employer to bargain, but not to enter into any particular form of agreement. It is clear that there is no explicit provision in the Act which would compel an employer to sign a particular form of contract. The Board attempts to supply the Congressional omission by the argument that where an employer has refused to bargain, the Board has discretion to order affirmative relief, which affirmative relief may include the requirement of a written, signed agreement. This interpretation of the Act is not justified, for at least two reasons. In the first place, the relief which the Board may give must be construed by reference to the substantive provisions of the Act; the Board surely cannot command more than the Act itself requires. In the second place, if the Board should be given the authority to require an employer to enter into a particular form of agreement, there is no reason why it should not also dictate the substantive terms of the understanding. Any such construction of the Act would surely render it unconstitutional.

As we have indicated in our Statement of the Facts, the Union and the Association each presented the petitioner with a demand for recognition and a proposed labor contract. The Union presented its demand and contract on May 24, 1937, the day before the strike. The proposed contract, which is in evidence as Board's Exhibit "6", (R. 38-40; 246), need not be analyzed, except to state that it contained demands for a "closed shop", for preferential hiring, for fixed wage minima, for a 10% increase in rates, for a 40-hour week and time and one-half time for overtime, and for vacations with pay. The representatives of the Union who presented the proposed agreement were advised by the petitioner that the petitioner could not lawfully recognize the Union as the exclusive representative of its employees without some proof that a majority of the employees had designated the Union as their agent for purposes of collective bargaining (R. 1032, 1034). The Union officials suggested that they could prove their majority by permitting a count of their membership cards, *face downwards,* but the petitioner declared that such evidence was unsatisfactory, because the cards might not be genuine (R. 1033). The petitioner countered with a proposal (suggested to one of its officers by the Regional Director of the Board) that the question be settled by a Labor Board election (R. 1033). The Union officers agreed that they would present this proposition to the membership but no reply was ever received by the petitioner, because the Union, without notice, called a strike for the following morning, shutting down the plant (R. 1034).

In the early stages of the strike, the Mayor of the City of Pittsburgh attempted to solve the controversy by suggesting an election (R. 1039), to which the petitioner and the Association agreed (R. 1043; 1040). The Union, however, again submitted the question of an elec-

tion to its membership and reported to the Mayor that the proposal was not acceptable (R. 1041, 1043). In the midst of this deadlock, the Association again approached the management of the petitioner, with a claim to a majority representation, and tendered as proof petitions containing the signatures of more than a majority of the employees and affidavits of the organizers who had solicited the signatures (R. 1044). The petitioner's representatives test-checked the signatures, examined the affidavits and expressed themselves as satisfied with the correctness of the Association's claims (R. 1044).

The Association's representatives and the petitioner's officials then went into negotiation over a form of contract (R. 1045). The parties ultimately reached an understanding with respect to wages, hours, working conditions, etc., and their agreement was integrated in a bulletin which the petitioner mailed to its employees (R. 1046, 1047). The Association requested a written agreement, signed by both parties, but the petitioner's officials demurred and the bulletin was the result (R. 1046, 1047). Inasmuch as the plant was strike-bound at the time, the bulletin was mailed to the employees, instead of being posted on the bulletin boards (R. 1046).

The strike continued until State and Federal mediators again brought the parties together. The petitioner and the Association expressed their willingness to settle the controversy by means of an election supervised by the National Labor Relations Board but the Union demurred on the ground that if the Association took part in the ballot and defeated the Union, the Union might be precluded from filing a charge with the Board that the Association was company-dominated. To eliminate this stumbling block, the mediators made the same proposal that had been made by the Mayor of the City of

Pittsburgh, that is, that the election be held without prejudice to the Union's right to file charges against the Association (R. 1049). On this occasion, the proposed stipulation was accepted by the Union and an agreement was signed by all of the parties, viz., the petitioner, the Union and the Association. This agreement, Board's Exhibit "16", (R. 48, 49; 566), provided for an election to be held between the two labor organizations and contained the following paragraph on the subject of recognition:

> "The Company agrees to recognize the organization receiving the majority of eligible votes cast as the exclusive bargaining agency and will within ten (10) days, after announcement of election results, commence negotiations for the purpose of reaching an agreement affecting wages, hours and working conditions."

There is one significant fact with respect to this agreement which the Board neglects to emphasize, although it is established by the testimony of its own witness, Wilner, who was the attorney for the Union. Wilner objected to the paragraph just quoted because it did not require a "written agreement" (R. 569) but the Company's attorney insisted upon the omission of the word "written" (R. 600), and Wilner finally agreed (R. 604). This fact has a most important bearing on the sincerity of the stand which petitioner's officials took during the negotiations.

The election was held on June 8 as agreed and the Union was victorious by a vote of 1079 out of 1930 (R. 572). Beginning on June 17, representatives of the Union met with representatives of the petitioner in a series of negotiations with respect to a proposed agreement (R. 572; 1052). At the first meeting, the Union presented a draft of an agreement (Board's Exhibit

"18", R. 50-55; 573) which contained many of the demands made in the original proposed contract (Board's Exhibit "6" (R. 38-40; 26), described at page 20, *supra*), as well as several additional requests. For example, the second proposal asked for a 20% increase in wages instead of the 10% previously demanded, for a more liberal vacation plan (extending to employees of one year's service, where the previous proposal extended only to employees of five years' service or more), for a more elaborate seniority plan and for several holidays.

Two active directors of the petitioner, Messrs. Riley and Shinabarger, accompanied on some occasions by an attorney, handled most of the negotiations with the representatives of the Union (R. 581, 582). The personnel of the Union committee occasionally varied but most of the negotiation was handled by its attorney, Wilner, and by several international officers and agents (R. 572, 573). The Union was also aided by a priest, the Reverend Charles Rice (R. 582).

It would serve no useful purpose to review the various proposals and counter-proposals which were made and argued by the parties throughout the negotiations. The principal stumbling block was the Union's demand for a 20% increase (R. 1054), the petitioner taking the position throughout that competitive conditions in the industry would not justify more than the 10% increase to which it was agreeable (R. 1054-1056). However, by July 1, the parties to the negotiation seemed to have eliminated all of the highly controversial issues and the Union, at a meeting on that day, agreed to submit to its membership the question of the acceptability of the proposed 10% increase (R. 1057). At the close of this conference between the parties on July 1, the petitioner's representatives checked over the various items as to

which the parties seemed to be in agreement and became aware of the fact that the Union negotiators might have received the impression that the Company intended to embody the terms of the proposed understanding in a written, signed agreement (R. 1057, 1058; 1121). To correct this impression, they sent for Kracik, a national officer of the Union, who had been one of the Union's active representatives at the meeting, and informed him that the petitioner had not agreed to make a written, signed agreement for a definite term (R. 1058; 1122). Before this meeting, Kracik had indicated to the petitioner's representatives that he would be satisfied with a simple bulletin expressing the understanding reached by the parties, because his Union had followed a similar procedure in other agreements with local packing houses (R. 1058; 1122; 644, 645). When the petitioner's officials told him that they had not wanted to create the impression that the Company intended to sign a written agreement, Kracik again indicated that he would be satisfied, stating that such procedure would give him the advantage of being able to come to the petitioner every week or so with new demands (R. 1058; 1122). The issue being thus clarified, nothing further was said and Kracik returned to Union headquarters.

The Union voted to accept the Company's offer of a 10% increase and negotiations were resumed on the form of the contract (R. 1058). At the next meeting, the Company representatives reiterated their position that the agreement should be embodied in a bulletin to the employees and, although Wilner, attorney for the Union, objected to this procedure, he finally agreed to take up the problem of drafting the bulletin with the petitioner's attorney, Ebbert (R. 1059, 1060; 586). Ebbert thereafter prepared a draft of a bulletin and several discussions were had between Wilner and Ebbert with respect to its phraseology (R. 587). Finally, Wil-

ner and Ebbert seemed to reach an accord, but one point of substance was still undecided in that the petitioner insisted upon exempting work on perishable commodities from the overtime provisions of the agreement and the Union refused to agree (R. 1059, 1060). The proposed bulletin therefore stated that the exemption would be made but that the Union did not agree to it (Board's Exhibit "20", R. 60-65; 588). Wilner indicated his satisfaction with the bulletin in a meeting attended by Wilner, the Committee and Messrs. Riley and Shinabarger. Riley and Shinabarger stated, however, that they would have to obtain approval of the bulletin (R. 1060). The bulletin was submitted to Mr. Anderson, their superior,[5] who objected to several features in the bulletin (R. 1061, 1062). He thought the bulletin was too long and too difficult to understand, he considered that the grievance procedure was unnecessarily complicated, and he objected strenuously to leaving open the question of the exemption of work on perishable commodities (R. 1061). As he said, it would make the bulletin an agreement not to agree (R. 1061). The bulletin was therefore rewritten as to form and reduced as to content. This new

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5. The Board makes some point of the fact that Riley and Shinabarger had full authority to deal for the petitioner, apparently for the purpose of inferring that this reference to their superior was a repudiation of the agreement. The fallacy of this argument could be demonstrated but it is not necessary to do so. In the first place, the record shows that a revised bulletin was ultimately adopted. In the second place, it is no part of the Board's jurisdiction to attempt the specific enforcement of labor agreements. Perhaps the Board mentions the matter in order to create the impression that the petitioner delayed the negotiations but again that is no concern of the Board's. It is the essence of bargaining that each party shall strive to obtain the best bargain for himself and if the Board is to have the right to supervise the processes of negotiation, collective bargaining will become a one-sided farce. The Board's action contrasts strangely with the statement of Senator Walsh, a proponent of the Act, during the Senate debate prior to its passage. Referring to the negotiations between employers and unions, the Senator declared: "What happens behind those doors is not inquired into and the bill does not seek to inquire into it."

draft of the bulletin was then presented to Wilner, but Wilner was not satisfied with it, principally because the opening paragraph of the bulletin merely stated that the Company had "bargained with the certified collective bargaining agency for our employees" instead of referring to the Union by name. Other objections to the redrafted bulletin were made by the Union, principally on the subject of overtime pay. The Company, however, acceded to the demands of the Union with respect to overtime and as a result a third bulletin was drafted and accepted by both parties (R. 593). This final bulletin (Board's Exhibit "22", R. 68-71; 594) was then mimeographed and posted on 30 bulletin boards in the petitioner's plant (R. 1063). It recites that the Company had bargained and reached an understanding on the subject of wages, hours, etc., and closes with the statement that its terms are to remain in effect until further notice.

It is unnecessary to analyze the final bulletin, except to state that it covers the subjects of a 10% wage increase, of minimum hourly rates for male and female employees, of hours of work and overtime compensation, of vacations, of seniority and of the procedure for adjusting grievances. There is no doubt that this final bulletin constituted an agreement between the parties, as it recited, even though it was an understanding which could be cancelled by either party upon notice to the other. Company officials testified that they regarded it as a binding agreement (R. 1065; 1124) and this was admitted by Wilner (R. 608), the Union attorney, and one of the principal witnesses for the Board. Moreover, in literature circulated among its adherents after the bulletin was posted (Respondent's Exhibit "7", R. 87; 1027) and in its official news journal (Respondent's Exhibit "6", R. 82-87; 1026), the Union referred to the

bulletin as a contract between the Company and the Union.[6] The only point of objection to the bulletin was that it was not a written agreement, signed by both parties, which objection was made by Wilner at the time he accepted the terms of the bulletin and by Tasker, business agent for the Union, after it was posted (Board's Exhibit "23", R. 71, 72; 595).

From our point of view, there are three significant propositions revealed by the foregoing review of the record. In the first place, as we have already indicated, the bulletin was a binding, *integrated* contract and was so accepted by the parties to it. In the second place, although the Board seems to make something of the fact that the agreement was not for a fixed term (and, in fact, tried the case on a theory that a fixed term was essential if the Union desired it), it appears to be clear from the testimony of Kracik and Father Rice, both witnesses for the Board and negotiators for the Union, that *the Union did not want a contract for a fixed term and at one stage in the negotiations did not want any agreement.* Illustrative of this fact is the testimony of Father Rice, in which he admits that he wrote in a newspaper column conducted by him that "the workers, wanting peace, agreed to accept the terms, *but for no definite period and they refused to sign a contract with the Company.*" (R. 639; Respondent's Exhibit "2", R. 76-78; 640). The third, and most significant factor, is that the negotiations between the Union and the Company were not barren of results for the Union, as the Board would have one believe.[7] On the contrary, the Union achieved

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6. The news article (published October, 1937; Respondent's Exhibit "6" (R. 82-87; 1026)) recites that "after nine weeks of negotiating between the H. J. Heinz Company and the Canning and Pickle Workers Union, Local 325, an agreement was finally reached and posted on the bulletin boards * * *."

7. It is interesting to compare with the Board's implication that the petitioner was not sufficiently generous with the Union, the state-

many of its demands. This is clearly shown in the testimony of Wilner, which brings out the following: The Union demanded a 20% wage increase, and received 10%; it requested a 62½¢ minimum for men and got 60½¢; it demanded that men called out for work and not used would receive at least two hours' pay, to which the company acceded; it demanded the 8-hour day, the 40-hour week and time and one-half for overtime, which was granted; it requested double time for Sundays and holidays, and received time and one-half. It asked for a vacation plan of two weeks for employees of five years' service, three weeks for female employees of 15 years' service and three weeks for male employees of 20 years' service. Instead of that, the Union received a vacation with pay of one week for every employee who had a service record of one year or more (R. 618-620). To this Wilner added that, after the bulletin was posted, the Union presented and negotiated a number of grievances and other points with the Company, thus admitting that both parties treated the agreement as a working arrangement (R. 620). To all of this we may add that, although a considerable time may have elapsed in the preparation of the bulletin, once the parties had reached an understanding on points of substance, the bulletin stipulated that the wage increases and the overtime provisions would become effective July 1, which was the date upon which the parties were in accord on most of the points at issue.

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ment made by the Union's business agent, Tasker, in a letter sent to the petitioner two days after the bulletin was posted. Tasker says: "we realize that the concessions gained for the employees • • • were the direct results of our efforts and we are anxious to conserve for the Heinz employees the benefits which they so richly deserve and for which we strove so hard" (Board's Exhibit "23", (R. 71, 72; 595)). Compare also the Union's news story about the contract appearing in its official paper in October, 1937 (Respondent's Exhibit "6", (R. 82-87; 1026)).

With these facts in mind, and paying special heed to the three significant factors just outlined, we proceed to a discussion of the legal aspects of the case. It is obvious from our review of the facts that there was no actual refusal to bargain with the exclusive representatives of the petitioner's employees. On the contrary, there was extended bargaining with the Union, which resulted in substantial concessions for the Union and the employees. There is also no issue in the case of the failure of the Company to reach an accord with the Union. On the contrary, all parties agree that an understanding was reached and committed to writing, so that despite the efforts of the Board to confuse the issues by bringing in extraneous matters, there is only one point in issue—*"Is it an unfair labor practice for an employer, who has reached an understanding with the representative of his employees, to decline to embody that understanding in the particular form of agreement desired by the Union?"*

The National Labor Relations Act is silent on the subject of agreements between employers and the representatives of their employees.[8] Section 9 of the Act provides that the representatives selected by the majority of the employees in an appropriate unit "shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining * * *." Section 8(5) of the Act declares that it shall be an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a)." The Act can be searched from its opening phrase to its close without

8. It is noteworthy that the Board has conceded in other cases (see, e. g. *Inland Steel Company v. National Labor Relations Board*, 109 F. (2d) 9 (1940)) that there may be instances where a written agreement is not required. This novel doctrine is the equivalent of saying that the intent of Congress depends upon the Board's decision in a particular case.

finding any evidence of an intent on the part of Congress that an employer be *required to reach any agreement with the representatives of his employees.*

The intent of Congress, with respect to the scope and effect of a legislative act, can be ascertained from three sources: (1) from provisions of other legislation on the same subject, (2) from the expressions of members and Committees of Congress and (3) from the fundamental scheme and object of the legislation itself. If these standards are applied in the instant case, the error of the Board's position becomes patent.

So far as similar legislation is concerned, it will clearly appear, upon analysis, that if Congress had intended to require the employer to sign an agreement, it would surely have spoken its mind on the subject. In the Railway Labor Act (45 U. S. C. A. § 151 *et seq.*), Congress was much more specific on the subject, for it declared that "it shall be the duty of all carriers, their officers, agents and employees, to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions * * *." In enacting amendments to the Merchant Marine Act of 1936, (June 29, 1936, C. 858, 49 Stat. 1985, 46 U. S. C. A. § 1101 *et seq.*) Congress was even more explicit, for it declared that the Maritime Labor Board should encourage employers and employees "to make and maintain *written* agreements concerning rates of pay, hours of employment, *etc.* * * *." (46 U. S. C. A. § 1254) If Congress had desired to go even this far in contemporaneous labor legislation covering the industrial field, surely it would not have been reluctant to put its thoughts into words.

The *expressed* intent of Congress is shown by the report of the Senate Committee on Education and Labor, recommending the passage of the Act, in which it is said that

"'the Committee wishes to dispel any possible false impression that this bill is designed *to compel the making of agreements or to permit governmental supervision of their terms.* It must be stressed that the duty to bargain collectively does not carry with it the duty to reach an agreement, because the essence of collective bargaining is that either party shall be free to decide whether proposals made to it are satisfactory."

The author of the Act, Senator Wagner, expressed a similar view when he declared: "The law does not require an employer to sign *any* agreement of *any* kind. Congress has no power to impose such a requirement. An agreement presupposes mutual consent." To this Senator Walsh, a proponent of the Act, has added, that "employers are left free in the future as in the past to accept whatever terms they choose."

This Court has expressed similar views in *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1 (1937), in the following statement (page 45):

"The Act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer 'from refusing to make a collective contract and hiring individuals on whatever terms' the employer 'may by unilateral action determine.' The Act expressly provides in § 9(a) that any individual employee or a group of employees shall have the right at any time to present grievances to their employer. The theory of the Act is that free opportunity for negotiation with accredited representatives of employees is *likely* to promote industrial peace and may bring about the adjustments

and agreements *which the Act in itself does not attempt to compel.* * * *."[9] (Italics supplied.)

Where then does the Board derive the right to command the employer to do more than the literal provisions of the Act require? The Board's answer to this point is an argument which might be persuasive in a Congressional hearing to amend the Act but has no bearing upon its construction. The Board says—and whether this be the fact or not is indeed an open question—that the history of labor relations demonstrates that collective bargaining frequently results in written agreements signed by the parties to the negotiations. (With this finding may be compared the experiences of this particular Union in its dealings with the packing houses, in which bulletins similar to that involved in the present case have been used.) The Board then argues that since the Act condemns a refusal to bargain, the condemnation necessarily extends to a refusal to make the kind of agreement which usually follows from collective bargaining.[10] This method of argument, we submit, is not only illogical, it ignores the fundamental scheme and object of the Act, which, as we have indicated, provides the third—and determining—measure of Congressional intent. To emphasize this point, a brief analysis of parts of the statute is necessary.

The Act, in substance, performs two functions. In the first place, it provides a means for ascertaining and recording the selection of representatives for collective

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9. In *Virginian Railway Co. v. System Federation, etc.*, 300 U. S. 515 (1937) this Court placed a similar construction on the much stronger language of the Railway Labor Act which is quoted *supra*.

10. This is another example of the Board's inconsistent construction of the intent of Congress. Presumably if there was, in a particular industry, a tradition that signed contracts were not in order, the Board would not impose any obligation upon an employer in that industry.

bargaining and establishes the principle of selection by majority rule. This function is outlined in Section 9 of the Act which permits the Board to investigate conflicts as to representation and to certify the representative which has been selected by the majority. With this function of the Act, the employer usually has little or no concern. In the second place, the Act creates certain safeguards against employer interference with the exercise by employees of their right to organize and designate representatives for collective bargaining. At the same time the Act creates an agency to enforce these safeguards and provides a procedure for enforcement. Just as the Act has two functions, so the Board has two duties to perform and it is obvious that in the exercise of either duty, the Board may do no more than administer the substantive features of the Act.

The National Labor Relations Act is not a comprehensive labor statute. Thus, it is not like the English Labor Disputes Law, which not only regulates the conduct of employers, but also supervises the conduct and administration of unions and provides methods for the adjustment of labor disputes. It does not even approach in breadth the Railway Labor Act (45 U. S. C. A., § 151 *et seq.*), which regulates *both* the employer and the employee and which has created a statutory medium for the mediation of disputes and threatened strikes. The National Labor Relations Act does not provide for mediation or the arbitration of disputes. It does not regulate the activities of unions or the conduct of strikes, etc. On the contrary, it purports to cover but one limited field, that is, the protection from interference and restraint on the part of the employer of the worker's right to organize. It is noteworthy, in this connection, that criticisms of the Act for its one-sided operation are usually countered by the argument that the Act is designed *only to prevent the employer*

from interfering with his employees **in the exercise of their right to organize and bargain collectively.**

This limited purpose of the Act is emphasized by an examination of its specific substantive provisions. Section 7 states, in general terms, the principle that employees have the right to organize and bargain collectively with an employer.[11] Section 8 buttresses this principle by prohibiting certain specific acts on the part of the employer which might tend to defeat the rights enumerated in Section 7. The acts prohibited are: (1) in Section 8(1), interference, restraint and coercion; (2) in Section 8(2), interference with or support of a labor organization; (3) in Section 8(3), discrimination as to hire, tenure of employment, etc., to encourage or discourage union membership. These prohibitions, which are negative in character, are obviously designed to prevent direct and open interference by the employer. However, Congress recognized, as the Senate Committee Report (May 2, 1935, Report No. 573) indicates, that the mere prohibition of direct interference would not suffice, because an employer might accomplish the same end merely by refusing to recognize the chosen representative of the employees and by dealing with the employees directly or through some agency not of their choice. As a consequence, Section 8(5) was added to make it an unfair labor practice for an employer to refuse to bargain with the designated representatives of his employees. The juxtaposition of Section 8(5) to the other subsections of Section 8, as well as the content of the Act as a whole, makes it clear that in Section 8(5) Congress was dealing with the same subject as it dealt with in Sections 8(1), (2) and (3), to wit, interference by an employer

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11. This statement of principle is the essence of the Act. If Congress had intended to do more than merely guard this right against interference, here was the point to do so.

with the right of his employees to select their own representatives for purposes of collective bargaining. It is equally clear that the prohibition contained in Section 8(5) was not designed as an instrument for forcing the settlement of labor disputes, or as a method of mediation or arbitration. This construction is borne out by the fact that the Act itself, in Section 13, declares that it shall not be construed *"so as to interfere with or impede or diminish in any way the right to strike."* If the Act had been designed as an instrument for compelling arbitration or compulsory agreement, it would surely have required employees, as well as their employer, to settle their disputes by agreement, rather than by resort to a strike which is the very negation of agreement.

This argument is by no means academic. It is true that the Act provides for *majority representation,* but it does not provide that the majority may *bind* the minority. Thus, a union which represents 51 out of 100 employees is the representative of *all,* but if the 49 dissenters do not like the terms which the union has made, they may refuse to work on those terms. In other words, they may strike, either *singly* or *collectively,* and their right to do so is specifically preserved by the Act. This being the case, how may it be said that the Act compels the employer to make a contract with a union when such contract *cannot* bind *all* the employees but can actually obligate only the *members* of the union.

May not this be a clue to the proper construction of the Act? In other words, is it not correct to say that the Act is not concerned with the *contract* which *may* result from negotiation, but with the *question of bargaining?* If the Act were designed to *compel contracts,* it would surely have ordained that the union selected by

a majority would have the power to *bind all* the employees and not merely the power to *bargain* for them. As a matter of fact, if Congress had attempted to bind the minority by the contract of the majority, it would undoubtedly have vitiated the validity of the Act.

The Board, in its efforts to convert the Act into a system of mediation, compulsory upon the employer alone, usually resorts to the recital of policy in Section 1 of the Act. This recital, which need not be set forth at length, declares, among other things, that it is the desire of Congress to encourage "practices fundamental to the friendly adjustment of industrial disputes" and to encourage "the practice and procedure of collective bargaining." This Court recognized the same principle in its statement in *Consolidated Edison Company v. National Labor Relations Board,* 305 U. S. 197 (1938), that the Act *"contemplates* the making of contracts with labor organizations." Conceding that the Act does seek to *encourage* collective bargaining and the orderly adjustment of disputes, it by no means follows that the limited and specific provisions of the Act can be therefore elaborated into a comprehensive statute on the subject of collective bargaining. The preliminary recitals, contained in Section 1 of the Act, clearly demonstrate that while the Act may seek to *encourage* collective bargaining, *it does so in only one direction, that is, by eliminating the obstruction to collective bargaining which might arise out of acts of interference on the part of employers.*[12] The scope and purpose of a statute is to be ascertained from the mischief or evil which it seeks to correct, not from the *hopes* of the legislators.

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12. This point is emphasized throughout the opinion of this Court in *National Labor Relations Board v. Jones & Laughlin Steel Corporation,* 301 U. S. 1 (1937). For example, Chief Justice Hughes declares that "the theory of the Act is that free opportunity for negotiation with

The Board, in the instant case, has usurped the power of compelling arbitration which the law does not allow. It has forgotten the negative, prohibitory purpose of the statute and added an affirmative feature which is almost the equivalent of compulsory arbitration or mediation. If the Board may compel the employer to enter into a particular form of written agreement, on the theory that Congress designed the Act to prevent labor disputes, then there is no reason why it should not also usurp the right to dictate the terms of that agreement. This is not an idle warning. On the contrary, the Board's conduct in this case warrants the belief that, if it is not checked, the Board may some day arrogate that power. Thus, in its original decision in this case, which was subsequently withdrawn, the Board not only directed the petitioner to make a written, signed agreement, but also said that the petitioner should make that agreement for *a definite term.* In addition, a substantial part of the Board's *proposed decision* was devoted to the charge that the petitioner did not make sufficient concessions to the Union. If the Board may castigate an employer for not being generous and use this as a background for finding a violation, there is no reason why it cannot leap to the point of directly ruling that it is an unfair labor practice to refuse demands with respect to rates of pay, etc. If it can say that it is a trivial thing to refuse to sign the kind of an agreement wanted by the union where the union wants it for a particular advantage, it can just as easily measure the financial resources of an employer and say that a refusal to make a 5% increase in wages is so trivial that it must be motivated by a desire on the

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an accredited representative of employees is likely to promote industrial peace and *may* bring about the adjustments and agreements which the Act in itself *does not attempt to compel.*"

employer's part to deprive the union of the credit of obtaining an increase.

The Board has attempted to justify its extension of power by leaning on the tenuous theory that the petitioner has been guilty of a refusal to bargain, because it has not accorded to the Union the status of an equal in bargaining power.[13] This hypothesis attributes to Congress a most unrealistic desire to equalize all bargains. An employer may be strong financially or on the verge of bankruptcy. A union may be powerful in its numbers and its resources or it may be penniless. The one who is strong may be able, by virtue of his resources, to drive a better bargain. The comparison of the petitioner as an established enterprise with the Union as an infant organization may fit the instant case, but in another situation, the positions might well be reversed. The National Labor Relations Act does not pretend to alter the facts of collective bargaining; it merely prevents the employer from weakening the Union by the process of interference and coercion.

In the last analysis, the decision of the Board had its origin in the demand of the Union that it be given the psychological advantage of appearing with the petitioner as a co-signatory to a written agreement. It was Wilner, the attorney for the Union, who wanted this and he himself conceded, in his testimony, that he wanted it solely for "psychological reasons" (R. 608, 609), that is, for the purpose of enhancing the prestige of the Union and making it easier for them to obtain other members.[14]

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13. This unique doctrine has unique consequences. We suppose that had the Union demanded that the agreement be signed by Howard Heinz and that Mr. Heinz make a statement to the employees that the Union had served them well, it would be a denial of dignity to refuse.

14. The efforts of the Board to secure this psychological advantage for the Union seem to distort the objects of the Act in another respect.

If Wilner had a psychological reason for demanding a written agreement, signed by both parties, the representatives of the Company had an equally important reason for declining to grant his request. As several witnesses pointed out, the election left a great deal of bitterness and hostility among the employees (R. 737; 1108), almost half of whom had supported the Association in the election. The Union was making statements to the employees that they would be *required* to join the Union (R. 1067). Thus, Board witness Tasker, business agent for the Union, admitted the publication of an article (Respondent's Exhibit "1", R. 75, 76; 632), addressed to non-Union employees, in which it was stated "we are letting you know before time that every non-union member in the plant will have a limited time to join Local 325, and if they do not join we will not be responsible for anything that occurs in front of the H. J. Heinz Company one of these days." He also said that this was one of his standard ways of getting members (R. 633). The officials of the Company, realizing the situation which prevailed following the strike, determined to prevent any improper use of an agreement between the Union and the petitioner (R. 1067). They

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As Congress has indicated (House Committee Report, June 10, 1935, No. 1147) "No private right of action is contemplated (by the Act). Essentially the unfair labor practices listed are matters of public concern, by their nature and consequences, present or potential; the proceeding is in the name of the Board, upon the Board's formal complaint." This Court so interpreted the Act in *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1 (1937). In our view, this construction should require the complete elimination, as a factor in the decision, of any demand or desire of the Union for a psychological advantage. Nevertheless, the Board, in its condemnation of the petitioner for failing to give sufficient credit to the Union and in the requirement of its Order that the petitioner sign a written agreement with the Union *"if requested by it"* seems to show greater solicitude for the enforcement of private rights for the Union than for the protection of the public interest in protecting employees from interference with the exercise of their rights under the Act.

also believed that the Union had been guilty of unfair tactics in calling the strike without notice and in its conduct of the strike (R. 1101). For these reasons, they believed that it was necessary to take a firm stand and to refuse to accede to the demand of the Union that there be a written, signed agreement.[15] Whether their fears in this respect were justified or not, it is the fact that they took this position and that they were entitled to do so. Moreover, they were not arbitrary in the matter, for in the bulletin which they prepared, they recited that the terms were reached by negotiation between the petitioner and the exclusive representative of the employees and *they specifically named the Union in the bulletin as the agency to take up grievances with the petitioner.* The Board apparently considers that this was tantamount to the refusal of recognition,[16] but it cannot escape the fact that negotiations were had and an agreement was reached.

In addition to the reasons assigned by the Company in its discussion with the Union, it is easy to see that there are other substantial reasons which might influ-

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15. To this we may add that the petitioner was consistent in its stand; its agreements with other labor organizations, viz., those representing its truck drivers, its carpenters, etc., were not signed contracts (R. 1067; 1079).

16. The Board also cites, as evidence that recognition was refused, the statement of Riley, in his testimony, that he considered the agreement as one between the petitioner and the employees, rather than with the Union, but this is indeed a pointless criticism when Riley's testimony is read. Riley was asked (R. 1081) if he considered the bulletin as an agreement between the Company and its employees, to which he replied in the affirmative. He was then asked "but you don't consider it an agreement between the Canning & Pickle Workers, Local No. 325" to which he replied "no; they have simply negotiated the agreement for the employees." Far from being a statement to be criticized, this seems to be a sound expression of the theory of the National Labor Relations Act, for it clearly looks upon a labor union, not as a thing apart from the employees, but as a representative or agent negotiating in the process of collective bargaining for all the employees.

ence an employer to decline a formal agreement which generally runs for a definite term. It is well known that labor agreements for a definite term tend to produce recurring labor disturbances at their expiration dates. The agreement is generally enforceable against the employer and not enforceable against the union, as men cannot be compelled to work against their will, and if wages rise, the employees drift into other employment, irrespective of the union agreement. The obligations imposed by the agreement were placed only on the Company. There was no covenant imposed upon the Union and no reason for the Union to sign the contract. The Company had similar arrangements with other unions and it was proper for it to desire uniformity regarding these agreements. This position helped to remove the Company from the risk of jurisdictional quarrels between unions, which frequently occur. All of these factors were proper reasons for refusing the form of the contract desired by the Union and if the Act is to be interpreted to require *a particular form* of agreement it will merely place obstacles in the way of the possibility of the parties arriving at an amicable settlement, instead of accomplishing the purposes of the Act.

The opinion of the Circuit Court in this case seems to have accepted the Board's theory that a violation of Section 8(5) may be predicated upon conduct of an employer which the Board interprets as a denial to a union of absolute equality in bargaining position. Thus the Court emphasizes four factors as showing bad faith upon the part of the petitioner: (1) the refusal to enter into a signed agreement; (2) the withholding from the Union of the status of an equal during the negotiations; (3) the revision by Anderson of the draft of the bulletin prepared by the attorneys; and (4) the adoption of dilatory tactics, as manifested by Anderson's refusal to

post the attorneys' draft of the bulletin and his substitution of a revised draft. All of these items, except No. 2, we have already mentioned. As to the alleged refusal to treat the Union as an equal in the course of negotiations, we can only say that we are unable to find in the record any evidence, however slight, of any such attitude on the part of petitioner. The petitioner's negotiators met with the Union's representatives on at least a dozen occasions and even furnished them with a place to meet, as it since has done in dealings with the grievance committee. At all of the meetings the Union was represented by its attorney. In addition, several international officers and organizers of the Union were present from time to time and in the early stages the Union had the assistance of a priest who had no official status with the Union. Not one of these persons—nor any member of the Union's local committee—had any complaint of discourtesy or overbearing conduct.[17] There was some testimony that the petitioner's representatives took a firm position on certain points at issue and particularly on the demand for a 20% increase but if firmness in negotiation is the equivalent of a refusal to bargain, then the employer might as well throw up his hands and enter the negotiations, not as an equal, but as an inferior. When we remember that the Board, in

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17. It is true that Father Rice, who attended some of the earlier conferences, testified that it was his *"impression"* that the Union men "were not being bargained as equals, and that the Company's attitude was best expressed by Mr. Anderson's 'take it or leave.'" (R. 637) However, it is clear that his impression was based upon the fact, as he testified, that he couldn't "remember in the negotiations any point on which the Company yielded." (R. 637) If he had attended all of the meetings and had realized that the petitioner in fact made many substantial concessions, his impressions would have been altered. We may add that his testimony as a whole indicates that he expected the petitioner to yield on almost every point (R. 638).

its administration of the Act, hews to the philosophy that there must always be, between capital and labor, a deep-rooted conflict of interest, it is indeed curious to find it taking such an unrealistic view of the processes of bargaining.

The truth of the matter is that all of these four factors are clearly beside the point. If there have been negotiation and an agreement, no court or administrative agency should have the power to inquire into attitudes and arguments which prevailed during the course of trading. *Perhaps we repeat ourselves, but it is fundamental that, while the course of negotiations may be relevant to establish the obstinacy of an employer who refuses to bargain, it has no place in appraising the conduct of the employer who has dealt and agreed.*

The acceptance by the Circuit Court of the "psychological" argument of the Board is emphasized in the concluding paragraph of its opinion, which reads:

> "Petitioner's refusal to execute a written agreement at the request of the Union may well have left the employees suspicious of its good faith and with a sense of insecurity that does not ordinarily exist when neither party has reasonable ground to doubt the other's good faith. We are of the opinion that the sense of insecurity engendered by petitioner's strange unwillingness to execute a written contract embodying terms that it would have its employees believe it had orally agreed to in good faith, required the Board to exercise the power conferred in § 10(c). There was no abuse of discretion in the order as made. *National Labor Relations Board v. Highland Park Mfg. Co., supra.*"

It may be observed that the Court's use of the word "may" is almost sufficient to show the conjectural character of its conclusion. Moreover, if the record as a whole be consulted it will clearly appear that this anxiety over the Union's "loss of face" is wholly speculative. The Union was a signatory, with the petitioner, to the written agreement which ended the strike. If the Union wanted to boast of its prestige, here was the documentary evidence. Moreover, wage increases, liberal vacation allowances and other improvements in working conditions are the tokens of a union's success and if the Union desired to enhance its reputation for vigor among the employees of the petitioner, the bulletin was just as much available—if not more so—as a signed and sealed agreement. As a matter of fact, as we have indicated (pages 26-27, *supra*), the Union, in its publications, made good use of the bulletin to this end. In the last analysis, the argument of the Board about "dignity" and "equality" amounts to this, that the Board seems to be more interested in aiding the efforts of the Union to organize the employees of the petitioner than it is in providing impartial and realistic administration of the Act. More than this, the Board's willingness to serve the cause of the Union by ordering the petitioner to scrap the agreement which now governs its relations with its employees shows but little concern for the rights of the rank and file which the Act is supposed to protect.

The opinions of the various Circuit Courts of Appeal on the subject of a written agreement may be of interest to this Court. Among these the most logical is the opinion of the Seventh Circuit in *Inland Steel Company v. National Labor Relations Board,* 109 F. (2d) 9 (1940). In that case, the facts were much stronger

in support of the Board's contention, in that the employer merely met with the Union and, taking the position that it was already observing the Union's demands with respect to wages, hours, etc., *refused to make any written memorial or record of the terms of employment.*[18]

The following extracts from the opinion of the Court are powerful arguments in support of our position (pages 23-25):

> "We are unable to agree with the argument that the Act imposes a duty upon an employer applicable only in some cases. We should think that such a construction of the Statute might well endanger its validity. When the concession is made, as it is, that the matter of a signed agreement is dependent upon a request by the employees or their representatives, and may be waived, we think it is clear that the matter becomes a subject of bargaining the same as any other request or demand. *The Statute is barren of any express language requiring a signed agreement and it must be held that no such agreement is required unless we*

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18. The decision in this case may have been influenced by the fact that the Congressional Committee investigating the Board has brought forth proof that the case as a whole was the result of a conspiracy between the Board and the Steel Workers' Organizing Committee to entrap the employer into a refusal to sign an agreement (Preliminary Report of Committee, Dated March 29, 1940). Despite this, and despite the fact that the Court also found that the employer had been denied a fair hearing, the Court's opinion on the subject of the obligation to sign a contract may be accepted as the unqualified view of the Court, by reason of subsequent decisions in which the Seventh Circuit Court has re-stated its opinion. See: *Fort Wayne Corrugated Paper Co. v. National Labor Relations Board,* 111 F. (2d) 869; *The M. H. Ritzwoller Co. v. National Labor Relations Board,* ..... F. (2d) .....; and *Stewart Die Casting Corp. v. National Labor Relations Board,* ..... F. (2d) .....

are authorized to read into the term 'collective bargaining' the condition that all agreements, not some, must be reduced to writing.

"* * * Our attention is called to what is designated as the historical development of the collective bargaining process, the function of the written trade agreement as a means of insuring industrial peace, and the legislative history of the Act. On the two former propositions, the argument is predicated largely upon various economic pronouncements including the testimony of two economists of repute who testified in the hearing, one for the petitioner and the other for the respondent. We are dubious of the pertinency of the argument made in this respect. It should be directed to Congress rather than to the courts. * * * It would seem the legislative history of the Act could be better appraised by what was said in Congress when the Act was under consideration. * * *"

* * * * * *

The Circuit Court then refers to various statements of Members of Congress who sponsored the Act (which statements we have already set forth, *supra*, pages 30 and 31), and continues:

"In arguing that we must read into the Act 'signed agreements', respondent argues:

"'* * * Manifestly, Congress could not set out in detail every step required by the duty to bargain in good faith. Of necessity it enacted a general command and left the Board and the courts free to determine in each instance the particular implications of that command. * * *'

"It would be a matter of serious concern to believe that Congress legislates in any such hap-

hazard fashion. It is fair to Congress to conclude that if it had intended to place upon the employer the duty of entering into a written agreement, it would have so provided. This belief is strengthened from the fact that in the amendments to the Merchant-Marine Act of 1936, it provided that the Board shall encourage all maritime employers and employees to exert every reasonable effort 'to make and maintain written agreements concerning rates of pay, hours of employment, rules and working conditions.' 46 U. S. C. A. § 1254."

The opinion of the Second Circuit Court of Appeals, in *Art Metals Construction Company v. National Labor Relations Board,* 110 F. (2d) 148 (1940), is opposed to the decision in the *Inland* case, but on the facts, it is not an authority against the present petitioner. In the *Art Metals Construction Company* case, the Court held that it was an unfair labor practice for an employer to refuse to commit to writing an agreement with the representative of its employees, but it is evident that the ruling is based on the theory that it is unreasonable to expose the terms of an agreement to the hazards of recollection. This clearly appears from the following quotation from the Court's opinion: (page 150)

"* * * They should include whatever is reasonably appropriate to protect it, and no one can dispute that a permanent memorial of any negotiation which results in a bargain, is not only appropriate, but practically necessary, to its preservation; it is hardly necessary to observe that without it the fruits of the privilege are exposed to the sport of fugitive and biased recollection. The purpose of a contract is to define the promised performance, so that when it becomes due, the parties may know the extent to which the promisor is

> bound; and it is the merest casuistry to argue that the promisor's freedom to contract includes the opportunity to put in jeopardy the ascertainment of what he has agreed to do, or indeed whether he has agreed to anything at all. The freedom reserved to the employer is freedom to refuse concessions in working conditions to his employees, and to exact concessions from them; it is not the freedom, once they have in fact agreed upon those conditions, to compromise the value of the whole proceeding, and probably make it nugatory."

In short, the Second Circuit Court has not gone beyond the point of holding that there should be some memorial of the agreement and there is nothing in its opinion to indicate that it subscribes to the *"dignity"* argument which has prevailed in the instant case. The opinion of the Ninth Circuit Court, in *National Labor Relations Board v. Sunshine Mining Company,* 110 F. (2d) 780 (1940), seems to have accepted, without much analysis, the views of the Second Circuit Court as expressed in the *Art Metals Construction Company* case, *supra.*

National Labor Relations Board v. Highland Park Manufacturing Company, 110 F. (2d) 632 (1940), decided by the Fourth Circuit Court of Appeals, is also opposed to the doctrine of the *Inland Steel Company* case, *supra,* although distinguishable on its facts from the instant case. It seems quite clear that in the *Highland Park* case the employer's representatives had gone into the conferences with the union, without intending to reach any agreement whatsoever. They made no counter-proposals and preserved an attitude of obstinacy throughout the negotiations. On the subject of an obligation to make a written agreement, the Court declared: (pages 637, 638)

"* * * The act, it is true, does not require that the parties agree; but it does require that they negotiate in good faith with the view of reaching an agreement if possible; and mere discussion with the representatives of employees, with a fixed resolve on the part of the employer not to enter into any agreement with them, even as to matters as to which there is no disagreement, does not satisfy its provisions.

* * * * * *

"The purpose of the written trade agreement is, not primarily to reduce to writing settlements of past differences, but to provide a statement of principles and rules for the orderly government of the employer-employee relationship in the future. The trade agreement thus becomes, as it were, the industrial constitution of the enterprise, setting forth the broad general principles upon which the relationship of employer and employee is to be conducted. Wages may be fixed by such agreements and specific matters may be provided for; but the thing of importance is that the agreement sets up a *modus vivendi*, under which employer and employee are to carry on. It may be drawn so as to be binding only so long as both parties continue to give their assent to it; but the mere fact that it provides a framework within which the process of collective bargaining may be carried on is of incalculable value in removing the causes of industrial strife. If reason and not force is to have sway in industrial relationships, such agreements should be welcomed by capital as well as by labor. They not only provide standards by which industrial disputes may be adjusted, but they add dignity to the position of labor and remove the feeling on the part of the worker that he is a mere pawn in industry subject to the arbitrary power of the employer."

It is clear from the foregoing quotations that the Fourth Circuit has likewise proceeded on the theory that there should be some memorial of the Agreement, as is further evidenced by the Court's subsequent acceptance of the opinion of Judge Hand in the *Art Metals Construction Company* case, *supra.*

Other decisions from the Circuit Courts might be cited, but we believe that the foregoing are representative of the best opinions. We concede that there is practical persuasiveness behind the argument that there should be some written record of labor agreements, although we do not believe that the Act itself can be properly construed as requiring more than recognition of, and negotiation with, the representative of the employee's choice. But there is a vast difference between requiring a written memorial and the action which the Board has taken in the instant case. Where the Board goes behind an agreement which has been reached and committed to writing, for the purpose of exploring the attitude and generosity of the employer and then condemns the employer, because he has not accorded sufficient respect to the Union, the very structure of the Act is perverted.

The construction which the Board seeks to place upon the Act will surely expose its provisions to the taint of constitutional invalidity, for it is the equivalent of an interpretation that the Act requires *one party* to the negotiations *to make an agreement against his will.* We need not cite the many decisions of this Court which hold that freedom of contract may not be abridged by statute or the rulings of an administrative agency. The opinion of the Court, in *Charles Wolff Packing Company v. Court of Industrial Relations,* 267 U. S. 552 (1925), seems to have determined the point. In that case, the Court struck down as invalid a compulsory arbitration

statute of the State of Kansas which authorized an administrative agency to fix terms of employment between employers and employees. In so holding, the Court declared: (page 569)

> "The system of compulsory arbitration which the Act establishes is intended to compel, and if sustained will compel, the owner and employees to continue the business on terms which are not of their making. It will constrain them not merely to respect the terms if they continue the business, but will constrain them to continue the business on those terms. True, the terms have some qualifications, but as shown in the prior decision the qualifications are rather illusory and do not subtract much from the duty imposed. Such a system infringes the liberty of contract and rights of property guaranteed by the due process of law clause of the Fourteenth Amendment * * *."

It may be observed that the Kansas statute at least had the virtue of imposing agreements on both parties to the transaction, whereas the Board's practice has the effect of forcing *only* the employer to agree. As a matter of fact, even if it so desired, the Board could not compel employees or their representatives to enter into collective bargaining agreements, for Section 8(5) of the Act is directed to the employer alone and the Act expressly reserves to employees the right to strike. It is perhaps a clue to the arbitrariness of the Board's Order, and a most influential factor in the construction to be placed upon the Act, that *in this very case the Order upon the petitioner to sign a contract is made contingent, not upon the petitioner's desires or upon the requirements of the law, but upon the wishes of the Union.* Thus, the Order says, in terms, that the petitioner must sign an agreement "if requested to do so" by the Union.

Another point on the subject of the constitutional validity of the Board's construction of the Act is worthy of observation. In the series of opinions,[19] in which this Court upheld the validity of the National Labor Relations Act, it justified the Act as a regulation of commerce on the ground that it was designed to eliminate obstructions which might interrupt the course of commerce. Thus, in *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, Chief Justice Hughes declared: (pages 36, 37)

> "The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce. Burdens and obstructions may be due to injurious action springing from other sources. The fundamental principle is that the power to regulate commerce is the power to enact 'all appropriate legislation' for 'its protection and advancement' (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (*Mobile County v. Kimball*, 102 U. S. 691, 696, 697); 'to foster, protect, control and restrain.' *Second Employers' Liability Cases*, *supra*, p. 47. See *Texas & N. O. R. Co. v. Railway Clerks*, *supra*. That power is plenary and may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it.' *Second Employers' Liability Cases*, p. 51; *Schechter Corporation v. United States*, *supra*. Although ac-

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19. *Associated Press v. National Labor Relations Board*, 301 U. S. 103 (1937); *Washington, Virginia and Maryland Coach Company v. National Labor Relations Board*, 301 U. S. 142 (1937); *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1 (1937); *National Labor Relations Board v. Fruehauf Trailer Company*, 301 U. S. 49 (1937); *National Labor Relations Board v. Friedman-Harry Marks Clothing Company, Inc.*, 301 U. S. 58 (1937).

> tivities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. *Schechter Corporation v. United States, supra* * * *."

It appears from the opinion, that the counsel for the employer had argued that the National Labor Relations Act was invalid because it was in practical effect *a labor statute* and *not a true regulation of commerce.* This Court, in the case cited and in its companion cases, refused to accept this contention and upheld the Act as a *bona fide* effort on the part of Congress to eliminate from the stream of commerce obstructions which could be traced to unfair labor practices on the part of employers. We do not believe that this Court meant to sanction the view that the Act was a comprehensive labor statute, authorizing a Federal agency to impose terms of employment upon employers and employees engaged in local activities. If this had not been the case, the Court would not have been so careful to preserve the precedent of *Schechter Corporation v. United States,* 295 U. S. 495 (1935), and similar cases.

As Chief Justice Hughes declared in the *Jones & Laughlin Steel Corporation* case, "the cardinal principle of statutory construction is to save and not to destroy." If the construction contended for by the Board is proper, it would surely destroy the constitutional validity of Section 8(5) of the Act.

II.

The Board's Conclusions That the Petitioner Was Guilty of Unfair Labor Practices Within the Definition of Sections 8(1) and 8(2) of the Act Are Erroneous, in That They Are Based Upon Acts of Individual Employees Which the Petitioner Neither Authorized Nor Ratified, But Promptly Repudiated.

If it is assumed that the petitioner did not violate Section 8(5) of the Act, as we have contended, then the Board's conclusions that the petitioner was guilty of unfair labor practices, within the meaning of Sections 8(1) and 8(2) of the Act, can be sustained on only one hypothesis, viz., that the petitioner should be held responsible for the activities and opinions of certain supervisory employees whose attitude might be construed as having been favorable to the Association and hostile to the Union. This single issue is pointed out in the somewhat unusual conclusion of the Court below that the petitioner "violated §§ 7,[20] 8(1) and 8(2) of the Act, *though there may have been neither express authorization nor ratification.*" In short, the opinion of the Circuit Court is based upon a theory of "liability without fault," an assumption that an employer may be held to have violated the Act, without willing or intending a violation. In order to demonstrate that this strange proposition is the sole issue before the Court, a somewhat complete analysis of the facts is essential.

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20. In our discussion of this issue, Section 7 of the Act will be disregarded because it merely states the general principle which is sought to be protected by the specific prohibitions of Section 8. The authority of the Board, under Section 10, is confined to the prevention and correction of the unfair labor practices proscribed by Section 8. It follows that unless Section 8 has been violated, the Board has no jurisdiction.

In the interests of clarity, we shall discuss separately the facts relating to the alleged violations of Sections 8(1) and 8(2), but there are certain preliminary facts which bear upon both situations.

(a) *Preliminary Facts*

The petitioner is an established food packing enterprise. It maintains and operates many plants, receiving stations, warehouses and other facilities throughout the United States and in foreign countries (Board's Exhibit "2", R. 19-25; 239). Its principal plant and executive offices are located in Pittsburgh where the organization had its origin about 70 years ago (R. 1050; Board's Exhibit "4", R. 26 at 29; 241). Throughout its existence, the petitioner's relations with its employees have been most satisfactory; its labor policies have been both generous and personal. Among the benefits provided by the petitioner to employees have been pensions, hospitalization and insurance. In connection with its Pittsburgh plant, it has maintained an auditorium, in which various forms of entertainment have been furnished to the employees, without charge (Board's Exhibit "4"; R. 26 at 34, 35; 241). It may justly be said that throughout its history, the petitioner's employees have been accustomed to associate and deal with their supervisors and with the management on an intimate basis. Until 1937, the petitioner had had no experience with any organizational activities among its employees (Decision and Order of the Board, R. 201) or with the emotional stresses which such activities usually generate. Its supervisory force had received no instruction as to the position which should be taken with respect to the organizational activities of the employees, because until that time there was no reason for issuing such instructions. This fact has been neglected by the Board and by the Circuit Court

but on the issue of responsibility it has a most important bearing.

The Pittsburgh plant consists of many buildings, each of which is in turn divided into many departments (Board's Exhibit "4"; R. 26 at 30; 241). In these departments are performed the many processes which are required in preparing, packaging and shipping the petitioner's numerous food products. At Pittsburgh, the petitioner normally employs over 2,000 persons, many of whom are female employees (R. 752). Its supervisory force throughout the various departments numbers about 250.

There is no dispute in the evidence as to the status and authority of petitioner's superintendents, foremen, foreladies, assistant foremen and assistant foreladies, it being established that they are salaried workers, with powers of supervision in their respective departments and having a somewhat limited privilege of recommending the employment and discharge of the workers under them (R. 760-762).

There is also a classification of *hourly* employees, called "group leaders," who are not regarded as supervisors by the management (R. 753, 754), but for whose acts the Board holds the petitioner accountable. These employees work with the other non-supervisory employees but because of their superior training, ability or experience they are frequently entrusted by their foremen with the duty of laying out and directing the small groups of men or women who work with them (R. 754, 755). They do not have the supervisory authority of foremen and as a consequence there is a serious conflict in the evidence on the question of management's responsibility for their extraneous or collateral activities and statements. This question, however, is not important

to the immediate issue, except that it is appropriate to observe that the Board, in fixing the responsibility of the petitioner, has to a large extent relied upon the alleged activities of these group leaders, overlooking the fact that these men come into such intimate, personal contact with their companions in work that it would require Herculean efforts to observe and control their thoughts and beliefs. In this connection, it may be pointed out that both the Union and the Association admit these persons to membership and that they were permitted to take part in the election which has been previously mentioned (Board's Exhibit "16"; R. 48 at 49; 566; R. 475; 284).

In the early part of 1937, and particularly in April and May of that year, the Association and the Union undertook intensive and sometimes heated campaigns to enlist members among the employees. The coincidence of the two organization drives led inevitably to hostility and bitterness between the adherents of each group, which in turn bred confusion and disunion among the personnel as a whole (R. 730, 731). Public meetings were being held by each union and the employees were being constantly bombarded by the inducements and threats of each group. As we have indicated, the petitioner had never been faced with a situation such as this and its supervisory force found itself in the midst of the turmoil and confusion without any guidance as to the attitude which it should take.

Against this essential background, we proceed to consider the activities which the Board has characterized as establishing violations of Sections 8(1) and 8(2) of the Act.

(b) *Activities Bearing Upon the Alleged Violation of Section 8(1) of the Act*

The Board has concluded that the petitioner has restrained and interfered with its employees in the exercise of their rights under the Act in violation of the provisions of Section 8(1). The Board consistently holds that violations of Section 8(2) and Section 8(5) are *ipso facto* unfair labor practices within the meaning of Section 8(1), but, as we have indicated, Sections 8(2) and 8(5) are being separately dealt with in this argument and need not be mentioned here. However, the Board also points to certain transactions as of themselves showing a violation of Section 8(1) and it is these activities which will be analyzed in the following discussion.

Let us say at the outset that this *is not a case where the employer has indulged in actual or threatened discrimination.* Evidence of discriminatory discharges or other unfair treatment of employees, which may seem to be commonplace in many labor cases, is not found in this case. The only proof of interference or restraint consists of testimony that a few supervisory employees were guilty of statements or expressions of opinion which might be deemed hostile to the Union. The Board's evidence on this point may be summarized as follows: (1) That Heinrich, plant superintendent, in the course of separate conversations on various subjects with five employees, made remarks which disparaged the Union; (2) that Hayes, a general foreman, made similar remarks in a casual conversation with an employee; and (3) that four foremen (Locke, Brooks, Schirer and Fisher) and a sub-foreman (Vajentic) expressed opinions unfavorable to the Union to different employees in their respective departments. Heinrich specifically denied making the remarks attributed to

him (which is confirmed by his subsequent conduct, as hereinafter indicated) and most of the other alleged conversations or remarks were denied or explained by the accused persons. We recognize that the findings of the Board on the subjects of conflicting evidence and credibility are not to be attacked in this Court but we mention these denials and explanations to indicate the trivial character of the conduct of which the Board has complained.

The foregoing summary of the Board's testimony leads to certain important observations. In the *first* place, apart from Heinrich, the persons charged with anti-Union opinions are merely minor supervisory employees, who are in constant communication with their fellow employees and who may be expected to have frequent conversations with them, inside and outside the plant, on a great variety of subjects. In the *second* place, there is absolutely *no proof* that any executive or officer of the petitioner, who could be said to be responsible for its labor policies, authorized the statements or *had any knowledge that they were being made.* In the *third* place, the transactions of which the Board complains are *extraneous* remarks involving *merely a half dozen supervisory employees out of a force of almost 250,* while the employees to whom the statements are supposed to have been made (and who apparently were not influenced by them in the slightest degree) number about *a dozen* out of *2,000.* In the *fourth* place, and this is most important, all of these remarks and statements are supposed to have been made (according to the witnesses who complained of them) in the early stages of the Union's organization drive, at which time, as we have pointed out, the petitioner's supervisory employees were being faced with the confusion and strife occasioned by the conflicting claims of the two unions.

Even if we ignore the constitutional principle that the persons who are charged with disparaging the Union had a right to hold and pronounce these views, how can responsibility for their utterance be laid upon the petitioner? Not only is there no proof that the petitioner authorized these statements; there is nothing in the scope of its supervisors' authority which would warrant the belief that they had the power to commit their employer by their remarks on subjects extraneous to their work. On the contrary, the record conclusively demonstrates that the petitioner was plainly opposed to any unneutral conduct on the part of its supervisors (R. 730-733; 1029-1032; Respondent's Exhibit "3", R. 78-80; 733).

The record shows that on May 1, 1937 (about a month after the Union had begun its drive and three weeks before the strike) an international officer of the Union (Call) went to see Riley, an officer and director in active charge of the Pittsburgh plant, to register a complaint of "some interference with the employees' organizing." Riley asked him if he could mention a specific instance, to which he said "no", adding that he thought the "trouble" had been caused by "the foremen" (R. 1029). *Prior* to this complaint, Heinrich, the petitioner's superintendent, *had issued individual instructions to the foremen and foreladies* that they should take no part in organization activities in the plant, that they should give no advice to employees and that they should remain completely silent on the subject (R. 731). However, as a result of Call's *general* complaint, Heinrich, at Riley's direction, called a general meeting of the foremen and foreladies at which he repeated his previous instructions that they should preserve a neutral attitude in the organization campaigns (R. 731; 1031).

On May 21, 1937, Kracik, an international officer of the Union, and Tasker, its business agent, again ap-

proached Riley with a complaint of interference but on this occasion they said they were able to produce a specific instance in support of their charge (R. 1030). Riley advised them that if their complaint was found to be justified, the condition would be corrected. He investigated the complaint and called a meeting of the supervisory force for the same day. Riley himself spoke to the meeting and declared that the foremen and foreladies would be required to adhere to the policy of neutrality ordered by Heinrich (R. 1030, 1031). As Riley testified, he addressed the meeting for about 15 minutes, giving the background of the labor movement and telling those present, viz., the supervisory force, that they "had no place in this picture at all; they weren't to concern themselves with it" (R. 1031). Afterwards Riley advised the Union officials of his instructions and they stated that they were entirely satisfied (R. 1031, 1032). This appears, not only from the testimony of Riley, but also from the declarations of *a member of the Union's bargaining committee,* who testified *for the Board* as follows:

"Q. And you know that the Union officials went to Mr. Riley and complained that some of these straw bosses and some of these foremen were helping the association, don't you?

"A. Yes.

"Q. And Mr. Riley called a meeting of all the foremen and cautioned them against that, didn't he?

"A. That's right.

"Q. And your union expressed itself as entirely satisfied with what he had done, didn't they?

"A. Exactly" (R. 476).

The Union did not then or at any other time request any further action on the part of petitioner's management.

The Board seeks to cast a cloud upon the sincerity of these three separate sets of instructions, by inferring

that Heinrich could not have been sincere in issuing his orders, since according to the Board's belief, he had indulged in remarks disparaging to the Union. In addition to his constitutional right of free speech there are three conclusive answers in the record to this argument. In the *first* place, so far as Heinrich himself is concerned, it appears that the remarks attributed to him are said to have occurred before he issued the instructions which Riley ordered, so that his prior conduct could afford no grounds for doubting the sincerity of the subsequent instructions which he was required to deliver. In the *second* place, any question of Heinrich's sincerity could have no bearing upon the propriety of the instructions issued by Riley himself. Heinrich was merely a plant superintendent, while Riley was his superior, a director of the petitioner, in charge of its Pittsburgh plant. Riley's orders to the foremen and foreladies had all the force and authority of the petitioner's policymaking executives. In the *third* place, this contention overlooks the fact that of all the complaints which were made by Board witnesses on the subject of interference, *not one is claimed to have occurred after the day on which Riley made his address to the supervisory force.*

During the strike, many acts of violence and intimidation were committed and the bitterness and conflict which characterized the strike persisted after it was terminated (R. 733-735; 736, 737; 1067). Realizing that these conditions might tempt the supervisory force to take sides in the controversy, the officials of the Company, on their own initiative and without any request from the Union, decided to issue further instructions. Howard Heinz, the President of the Company, called a meeting of the supervisory staff at which he informed them in no uncertain terms that it was their responsibility to see that all employees were treated fairly and equally; that there should be no discrimination of any

kind and that the foremen and foreladies should have nothing whatsoever to do with the activities of the employees, except to see that the work was done (R. 732). Shortly after this, Heinrich addressed the staff along the same lines (R. 732, 733) and followed up the two addresses *with an official written bulletin to all supervisory employees* (Respondent's Exhibit "3"; R. 78-80; 733), in which it was said:

"We have had two meetings recently, entirely devoted to the subject of your relationship with the employees under your direction, and have tried to make it very clear to you that you must give considerable thought to your relationship with these employees.

"Every employee must be treated the same as any other employee, and while we have always operated on this principle, special stress must be laid on this point at this time, due to the recent disturbance in our industrial relationship, which has resulted in two groups of our employees becoming antagonistic to each other.

* * * * * * *

"* * * if you do have a sympathetic understanding of the condition and handle it in the right manner, you can do much to bring the people together in happy relationship one with the other and also the Management. *Only by being honestly impartial and disinterested can you hope to bring this about and we again urge you to direct your efforts to this end.*

* * * * * * *

"These statements apply to relationship with all our employees, as it is our aim and should be yours to see that every employee gets a square deal regardless of which group he has affiliated himself with.

"Complaints have reached us from the members of the two groups in our factory about occurrences which we feel should not give rise to complaint if the person involved had understood why certain things were done.

"The National Labor Relations Board called our attention on Saturday (to) two more complaints that, while they were rather trivial, did indicate just how careful you must be in talking to the employees, no matter how friendly you may feel toward them. The complaints had to do with statements made to our employees by two foremen, which statements were resented by the employees to the extent that they reported them to the Labor Board. Investigation indicates that both statements were made in a kidding manner without the foremen being aware that any resentment would be taken to the conversation, but it indicates clearly that all kidding and joking with employees under your direction must stop, as they seem to get upset now at things you say to them that ordinarily in the past would have been laughed at.

"We must insist that you do not talk to employees, except about their work, and you must treat them all just as fairly as it is humanly possible to do." (Italics supplied)

We submit that the foregoing record clearly indicates that the petitioner's supervisory officials endeavored, with the utmost sincerity, to prevent any conduct on the part of foremen or foreladies which could be construed as a violation of either Section 8(1) or Section 8(2) of the Act. It proves, not only that the petitioner did not in any manner authorize or acquiesce in the conduct which has been charged to some of its foremen, but also that it took active steps to prevent any repetition. If the supervisory force had indulged in interference and

coercion on a scale so wide that it would follow, as a necessary inference, that the petitioner had either authorized it or acquiesced in it, the situation might be different. In the instant case, however, the activities complained of were so infrequent and isolated (as well as of doubtful significance), that there can be no legitimate inference that they were manifestations of any policy on the part of the petitioner.

(c) *Activities Bearing Upon the Alleged Violation of Section 8(2) of the Act.*

The Board has concluded that the petitioner violated Section 8(2) of the Act by dominating and interfering with the formation and administration of the Association and, upon the basis of such conclusion, the Board has directed the petitioner (1) to cease and desist from interference with the Association and (2) to withdraw recognition from the Association as the representative of its employees and to disestablish the Association as such representative.

We may observe at the outset that the second part of this order, that is, the direction to withdraw recognition and to disestablish the Association seems to be utterly beyond the authority of the Board in the instant case, *because there is no showing that the petitioner has been or is in any manner recognizing the Association as the representative of its employees.* On the contrary, the record demonstrates that while the petitioner may have accorded recognition to the Association for a few days during the strike, this recognition and petitioner's agreement with the Association were withdrawn and cancelled before the end of the strike by virtue of the agreement to submit the question of representation and recognition to a secret election sponsored by the Board (Board's Exhibit "16", R. 48, 49; 566). Moreover, the

election resulted in a victory for the Union and the petitioner immediately accorded recognition to the Union as the exclusive representative of its employees, entering into an agreement with it on that basis. This recognition and the agreement have continued in effect since July, 1937. It is patent that the continued recognition of the Union is the equivalent of non-recognition of the Association for under the law it is impossible for both organizations to act as the representative of petitioner's employees in the same unit. The Board has nevertheless sought to uphold this portion of its Order upon the theory that this Court has sanctioned the principle that an order to withdraw recognition and disestablish a union does not lose its force merely because it has become moot. However, this ruling has been applied by this Court in cases where the withdrawal of recognition was accomplished by a simple statement of the employer, leading this Court to hold that a mere withdrawal by the employer cannot relieve the effect of prior domination and therefore will not operate as an absolution. The vital distinction in this case is *that the original recognition was vitiated and set aside by an election, in which the employees were permitted to express their free choice and in which any prior recognition of one union by the employer could have had no influence whatsoever.* It follows, we submit, that this branch of the Order is clearly an abuse of the Board's authority. While this particular issue may not be precisely before the Court, it is mentioned at this point, because it shows the weakness of the Circuit Court's suggestion that the petitioner should have posted bulletins advising the employees of its neutrality.

On the subject of the petitioner's alleged interference with the formation and administration of the Association, let us say at the outset that the evidence upon which the Board has based its finding is confined to an

extremely narrow field of activity. The petitioner did not, in any manner, inspire or stimulate the formation of the Association; on the contrary, the only evidence in the record is that the Association was initiated by several employees who were, for their own reasons, hostile to the Union (R. 899-902; 981, 982; 989, 990; 994, 995; 1000-1002). Furthermore, the petitioner did not contribute any financial or other tangible support to the Association, either in its formation or in its administration (R. 902; 1047). Moreover, there is not herein a state of facts, which has appeared in many cases before this Court, in which representatives of the employer took part in the internal management and administration of the Association. On the contrary, the Association elected its own officers (R. 940), arranged its own government (R. 939) and retained its own attorney to handle the details of administration and to represent it in its negotiations (R. 904; 927-931).

It is fair to say that the evidence which is supposed to sustain the finding of interference and domination consists exclusively of the following items: (1) that during the early stages of the Association's organization drive, a petition pledging support of the Association was circulated in some of the departments of the petitioner's Pittsburgh plant, during working hours, with the seeming acquiescence of the supervisory force in such departments; (2) that a few so-called "group leaders" took part in the circulation of the petition and (3) that four or five foremen expressed to employees in their departments opinions which might be construed as favorable to the Association.[21]

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21. On this point, the Board relies heavily upon a so-called speech of Locke, foreman of the "Bean Department" to a group of approximately 30 employees. An Association petition which had been signed by several of the men had been stolen from an employee in Locke's department and a complaint was made to Locke. Locke called the

A very substantial part of the Board's testimony with respect to these three lines of proof was denied or a reasonable explanation provided. In addition, other facts were brought out which deprived the Board's proof of the substantial character required to justify its findings. For example, it appeared that the Union had also solicited members on the petitioner's property and during working hours.[22] Moreover, so far as the activities of the group leaders are concerned, it is most significant that they were eligible to membership in both organizations and took part in the Board election, so that having the right to join either union, the petitioner surely should not be held responsible for their activities in support of either organization.

We believe that we are entitled to make and emphasize the same observations with respect to these items of proof as we did with respect to the 8(1) issue. Again, the proof of interference by foremen is indeed trivial when it is considered that out of 250 supervisory em-

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men in the department together and read a statement (Respondent's Exhibit "4", R. 80, 81; 786) in which he said that a complaint had been made that an Association petition had been stolen and that this was wrong, because the men had the right to express their sentiments in favor of the Association, if they so desired. He also stated that any person in the department had the right to join either the Association or the Union and that "whatever your wishes are they will be protected." He closed his speech by stating that since the petition had been stolen, the men who had signed it would be given the opportunity to sign another copy of the petition, if they so desired. He closed his speech with the remark "if there are any who want to join the A. F. of L., I am sure there are men here who will take care of them and see that they get signed up." It may be noted that the Board believes he should have gotten an A. F. of L. organizer to take signatures, which is patently a *non-sequitur* since none of their records had been stolen.

22. The Board says this is negligible in comparison with similar conduct of the Association (Decision and Order, R. 198 at 211). The obvious explanation is that the Board was seeking to prove what the Association had done and deemed the like tactics of the Union wholly irrelevant.

ployees, scarcely a dozen are said to have been involved in questionable activities. Again, practically all of the proof is concerned with mere expressions of opinion on the part of supervisory employees, who were in intimate association with the men in their departments. Again, there is no evidence that any responsible official or executive of the petitioner took part in any of these activities or expressions of opinion or had any reason to suspect that they had occurred. Again, it is clear from the record that these activities and expressions of opinion occurred in the early states of the organization drives, in the midst of the confusion and hostility engendered by the conflicting claims of the two organizations.

The facts which we have recited in the preceding sub-division of this brief (*supra*, pp. 60, 61), relating to the actions taken by the management to forestall any improper conduct or remarks on the part of the supervisory force, are equally relevant here, for the instructions issued to foremen and foreladies not only required them to refrain from any hostility to the Union, but also prohibited any favoritism, in word or act, towards either organization. To this we may add that there is affirmative evidence that Riley's instructions were obeyed, in the fact that efforts of Association organizers to pass petitions in certain departments, after the date of the instructions, were stopped (R. 903; 827; 831).

(d) *The Legal Principles Involved.*

Although the Act is said to be remedial, rather than punitive, in character, a Cease and Desist Order is by no means an idle gesture. It brands the employer, in the eyes of his employees and of the public, as a violator of the laws of the United States. If supplemented by a direction to post notices, as in the instant case, it has the effect of requiring the employer to make a public

statement of his supposed guilt. In addition to these adverse effects on the prestige and standing of the employer, it also may result in serious material losses. For example, in the instant case, it appears that the employer sells its products to the general public and any loss of good-will with the public must have a prejudicial effect upon its business and its profits. To this we may add that the report of the Congressional Committee which investigated the Labor Board establishes the fact that the Board has obtained extra-judicial enforcement of its orders by inducing governmental and business agencies to boycott employers who have run afoul of the Board (Preliminary Report of Committee, dated March 29, 1940). Within the last few weeks, the Attorney General of the United States has made public an opinion to the Defense Commission that findings of the Board as to violations of the Act are binding upon other agencies of the Executive Branch of the Government. No doubt this will have some influence on the letting of Government contracts.

These consequences of a Cease and Desist Order are mentioned for the purpose of showing that the question of the employer's responsibility in a particular case is by no means a trivial issue.[23] Moreover, there is a principle of justice and morality at stake. So far as we know, under our system of government no man has ever been convicted of a crime upon the basis of the acts of an agent who had neither express nor implied authority to represent him. Even civil consequences are not, under ordinary principles of agency, imposed upon a person by virtue of the conduct of another, unless it appears that such conduct was either authorized or ratified. We do

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23. Perhaps we misinterpret the attitude of some of the Circuit Courts, but there seems to be, on occasion, a judicial inclination to give the Board the benefit of the doubt merely because, in the Court's eyes, the Cease and Desist Order is merely an academic restraint of past improprieties.

not mean to contend that express authority is essential; we do insist that, in its absence, there must be some substitute form of authority or ratification. *There is not a shred of evidence in this case that the petitioner's employees who were charged with improper conduct had any prior authority from the petitioner, either express or implied, to engage in such tactics.* This defect of proof of responsibility might not have been fatal if there had been evidence of ratification or of knowledge followed by acquiescence, but it also appears from this record that there is no such evidence. *On the contrary, there is distinct proof that knowledge, acquired after the event, was followed by express and unequivocal repudiation.*[24]

The authority of an agent is necessarily limited by the content and scope of his position. The petitioner's foremen and foreladies have authority to supervise and direct the activities of their co-workers, as well as a limited and special power to recommend the employment and discharge of employees. However, when it comes to

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24. It may be urged (and perhaps this is the theory of the Circuit Court) that "apparent authority" is sufficient, viz., that if some of the employees *believed* that their supervisors were representing the petitioner in expressing their opinions, the petitioner itself could be held accountable. Any such argument, while superficially plausible, is clearly without merit. The doctrine of apparent authority assumes the absence of actual authority; it is based on a theory similar to estoppel, that is, that a person, who clothes another with the external *indicia* of authority, is bound by his representations. This theory is obviously inapplicable here, because there is no proof that the petitioner represented that its supervisors had authority to speak on the subject of labor policies. Moreover, the doctrine of apparent agency necessarily confines its application to situations in which "private rights" are being enforced; it is never sufficient to convict a person of a public crime. As we have pointed out (*supra*, p. 39) the Act is designed to protect the public interest, not to enforce the rights of individuals. From the standpoint of public interest, the issue in this case is: "has petitioner violated a statute of the United States?" The beliefs and impressions of private persons are of no consequence and cannot substitute for actual responsibility.

expressing the views and attitude of the management on the subject of labor relations, it is apparent that the foremen are "doing" agents, and not "talking" agents. This appears not only from the essential nature of their employment, but also from the circumstances of the charges which have been made against this petitioner. It may not be a difficult task for an employer to prevent, or at least to correct, overt acts of discrimination committed by his supervisory force, but it is obviously impossible to expect him to police the thoughts, opinions and statements of a large and scattered supervisory force.

If we assume that the principle of freedom of expression is of no consequence, we are prepared to admit that there are situations in which an employer may be held accountable for the remarks of his subordinates. For example, if *several* supervisors *habitually* indulge in improper remarks, without any correction by the employer, it may be inferred that the speakers were expressing the employer's policies. It may also be true that if an employer *knows* that his supervisors are engaging in coercive tactics and refuses to undertake to prevent repetition, he may be charged with acquiescence. However, where it appears that the occasions of complaint were casual and the employer *repeatedly* issued firm and unequivocal instructions that an attitude of strict impartiality *must* be preserved, it is a monstrous thing to saddle him with responsibility for the extraneous opinions and acts of a few employees, which he never willed nor approved.

The Board's decision in this case does not try to meet this fundamental issue of responsibility. In the proposed decision, *the Board did not even mention any of the instructions which had been issued by the petitioner's management,* or the incident which we have

described, in which the Union expressed its satisfaction with the instructions which had been issued by Riley on its complaint. The petitioner excepted to the failure of the Board to find the facts which we have outlined, and in its final Decision, the Board was driven to plain evasion to avoid the issue. Thus, the Board makes the following argument on the point: (R. 210, 211)

> "The record shows that at some date prior to the strike, Heinrich instructed the foremen and foreladies that they were not to take part in any of the Union activities of the employees and that they should practice no discrimination between employees belonging to one or the other group. These instructions were apparently given at the request of Riley, a director of the respondent. Substantially the same instructions were given to the foremen and foreladies at two or three different times after the strike by various supervisors or officials of the respondent. It is apparent from the facts set forth in this decision that the respondent's supervisory staff failed to follow the instructions given during the period prior to the strike if, in fact, Heinrich intended them to be followed, which seems doubtful in view of Heinrich's own participation in such activities. The instructions given after the strike, even if followed, came after the anti-union statements and acts of the supervisory staff which are complained of, had been consummated. Under these circumstances, the respondent is not relieved from liability for the acts of supervisory employees as stated above, by showing that such instructions were given."

It is very significant that this equivocal statement studiously ignores the most fundamental facts on the point. It fails to state that Heinrich isued such instructions on *two* occasions, the second being the general

meeting which he called at the request of Riley, after the first (very general) complaint of the Union. Secondly, it evades the admitted fact, established not merely by petitioner's witnesses, but also by Board's witnesses, *that Riley, on a third occasion, prior to the strike, issued similar instructions to the supervisors, at the request of the Union, and subsequently received from the Union a statement that it was satisfied with his action.* In the third place, it attempts to conceal *the most important fact that there was no testimony of any improper conduct occurring after Riley's instruction,* which, as we have indicated, was issued several days *before the strike* was called.

The Circuit Court apparently appreciated the paltry character of the Board's argument on this point, for it has used a different reason to justify the order of the Board. Thus, the Circuit Court had this to say: (R. 1146, 1147)

> "Petitioner also contends that, even if its supervisory employees did engage in the aforesaid activities, there is no evidence that it expressly authorized or ratified those acts; on the contrary, when they were brought to its attention, it claims that all foremen were instructed to remain neutral and not discriminate against any employee because of union activities. But there was no evidence that petitioner directed any supervisory employee to communicate its alleged neutrality to the employees. If petitioner had really wanted its employees to know that they might with safety join whichever union they desired, the bulletin boards were the obvious and, because direct, the most effective means of assuring them of its impartiality. There was abundant evidence that the ordinary employees feared the disfavor of those from whom

they were accustomed to taking orders.[25] Since they were justified in believing that these supervisory employees were acting as petitioner's representatives, petitioner is responsible for what they did."

There are many answers to the hypothetical argument of the Court that the petitioner should have posted bulletins advising the employees that they were free to join any organization which they might select. In the *first* place, Riley's instructions (and his bore the unquestionable stamp of authority) were issued *at the request of the Union and Riley reported that fact back to the Union, so that it may be justly assumed that the Union advised its membership of the action which had been taken.* In the *second* place, any possible coercive effect (of which there is no proof) of statements and expressions of opinion by the supervisory force must have been dissipated by the agreement for an election which petitioner entered into with the Union and by the election, in which each employee had an opportunity to express, with the utmost freedom, his impartial choice. In the *third* place, after the election had been won by the Union, the Company posted the bulletin agreement, hereinbefore described, in which the Company recognized the Union as the representative of its employees, thereby unequivocally advising *all* the employees that the Company was prepared to accept the Union as the collective bargaining agent for its employees. Finally, it is a piece of injustice to condemn the employer for failing, *on its own initiative*, to issue

25. This statement should be accorded the respect which is due to the opinion of a court as sound as the Sixth Circuit Court of Appeals, but we are obliged to state that the most diligent examination of the record does not reveal any evidence to support this remark. On the contrary, an examination of the testimony of Board witnesses who charged petitioner's supervisors with improper remarks will show that they were not only uncoerced, they were militant and defiant.

bulletins to the employees, *when it had repeatedly issued detailed instructions to the supervisory force.* If the Union had asked the petitioner to post such bulletins, there is no reason to believe that the petitioner would have refused, because it appears that on two ocasions, at the request of the Union, and then again on its own initiative, the petitioner issued oral and written instructions to the supervisory force.

A Cease and Desist Order is in many respects the equivalent of an injunction. Its purposes under the Act are supposed to be both remedial and preventive. In its remedial aspect, such an order is designed to remove from the employee's mind any vestiges of employer restraint and domination. In its preventive aspect, it is designed to forestall any repetition of coercive tactics. Just as an injunction will not be issued in equity unless (1) there is a clear case for relief and (2) a convincing need of restraint, a Cease and Desist Order should not be lightly entered.[26] In this case, there is no evidence that any such remedial effect is needed, and on the contrary, the results of the election conclusively demonstrate that any opinions and remarks of the supervisory force must have had little or no persuasive effect. In like manner, its preventive purpose need not be served here, for the record conclusivly shows that the petitioner took steps, *long before the complaint herein was issued,* to prevent any repetition of the tactics which are now said to be unlawful. Moreover, these preventive measures were undertaken in absolute good faith, for

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26. The analogy between an injunction and a Cease and Desist Order may be extended beyond this point. An equity court will not usually grant a restraining injunction on the basis of isolated occasions of wrong-doing, nor will it exercise this extraordinary remedy unless the situation is such that serious harm will result from the failure to grant relief. A "cease and desist" order has all the inhibitory effects of an injunction, and the same sanction behind it, that is, proceedings for contempt.

they antedated the strike by several days and Riley's orders, it appears, were issued as soon as the Union complained to him.

There are decisions of this Court and of the Circuit Courts which seem to be persuasive on the point of responsibility. Thus, in *National Labor Relations Board v. Sands Manufacturing Company,* 306 U. S. 332 (1939), this Court refused to uphold a ruling of the Board that certain employees had been discharged by reason of their exercise of their rights under the Act, in violation of Section 8(3) of the Act. To support its conclusion of discrimination, the Board relied upon testimony concerning alleged statements of a superintendent and of a shipping clerk. With respect to these statements, the Court said (page 342):

> "Neither of the men who are quoted held such a position that his statements are evidence of the Company's policy * * *."

The Board may make the evasive argument here, as it did in the Court below, that *National Labor Relations Board v. Sands Manufacturing Company,* 306 U. S. 332 (1939), does not support our position because it "has nothing to do with an employer's responsibility for coercive activities engaged in by supervisors." The Board seems to forget that in that case the complaint alleged that the discharge involved constituted a violation of Section 8(1), which prohibits interference, restraint and *coercion,* as well as of Section 8(3). In any event, the principle applied there is applicable here. This Court held that, because of the positions the employees held, they could not bind their employer by their statements; *i. e.*, their remarks did not establish the employer's labor policy. It follows that employees similarly situated cannot bind petitioner by their sta ments; *i. e.*, their remarks are not petitioner's, and it is not responsible

for them. Our view of the effect of the *Sands Manufacturing Company* case, *supra*, is supported by the fact that at least two circuit courts have cited the case on the point of responsibility. See: *Hamilton-Brown Shoe Company v. National Labor Relations Board*, 104 F. (2d) 49, at 52 (C. C. A. 8, 1939); and *C. G. Conn, Ltd., v. National Labor Relations Board*, 108 F. (2d) 390, at 400 (C. C. A. 7, 1939).

A similar view appears in the opinion of the Second Circuit Court, in *Ballston-Stillwater Knitting Co., Inc., v. National Labor Relations Board*, 98 F. (2d) 758 (C. C. A. 2d, 1938), as is evidenced by the following language (page 762):

> "There is not the slightest evidence in addition to the conduct of these 'supervisory' employees that the petitioner initiated the movement for an unaffiliated union. The most that can be inferred is that superintendent Hathorn knew that 'supervisory employees' were circulating membership cards for the Association during working hours, and that he took no step to prevent it. *As a matter of law, in our opinion, this does not amount to domination or interference by the employer.* There is no evidence that Hathorn would not have been equally lenient with regard to the circulation of petitions for membership in the CIO. Some solicitation for CIO members was done in the mills, although apparently less openly and to a less extent. No request was made for leave to circulate them openly and no demand that the circulation of Association cards be stopped. *To constitute domination or interference by the employer we think that it must appear that the employees are acting for him rather than for themselves, or that the employer in some manner gives aid to one group which he withholds from the other,*

or discriminates in favor of members of a labor organization or against non-members." (Italics supplied)

Likewise, in *Cupples Company, Manufacturers, v. National Labor Relations Board,* 106 F. (2d) 100 (C. C. A. 8th, 1939), the Board had contended that since a certain employee "was shown to have been regarded and referred to as a 'forelady' or 'supervisor,' a finding that her interference and domination in connection with the formation of the Association was the interference and domination of the employer was justified."

To this the Court replied:

"* * * *What her fellow-employees of the match department may have assumed her authority to be,* and what she may have represented it to be, *we regard as unimportant* in so far as the Company is concerned, since there is no proof that her acts which are complained of were done at its direction or with its knowledge or consent. It would be strange if the efforts of the employees of the petitioner to organize and to select representatives for collective bargaining could be utterly frustrated and destroyed through attributing the acts of one of their number—who, so far as the record shows, was eligible to membership in both the Association and the Matchworker's Union—to the employer, without any showing that the employer had ever authorized, consented to, or was aware of such acts."

The two cases discussed immediately above were relied upon by the Circuit Court of Appeals for the Seventh Circuit in *Link-Belt Co. v. National Labor Relations Board,* 110 F. (2d) 506 (1940) where the Court set aside findings by the Board that certain employees had been discriminated against and that an employees' asso-

ciation was company dominated. That case is particularly pertinent here because it was shown that the employer instructed the management staff to refrain from engaging in union activities, and that the instructions were passed on to the foremen. The view of the Court on the question of responsibility is indicated by the following passage from the opinion (page 511):

> "The point is made that the fact that foreman Siskauskis attended, without participating, the first meeting of the Independent, that foreman Olson had explained to an employee the advantages of an inside union over an outside union, that one Nyberg had another employee to help organize for Independent, and that foreman McKinney had instructed an employee to solicit for Independent, is evidence of unfair labor practices. It is undisputed that Fred B. Skeats was the only person in the foundry who had the power to hire and discharge. Neither of the men involved had that power.
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> "The mere attendance by a foreman at the meeting is not evidence of interference, and the expression by men of a dislike to organized labor does not indicate that they must be acting for the management. National Labor Relations Board v. Swank Products, Inc., supra. *We cannot believe that what they did, under all the circumstances in this case, can be charged to the company.* Ballston-Stillwater Knitting Co. v. National Labor Relations Board, 2 Cir., 98 F. 2d 758, 762; Cupples Co. etc. v. National Labor Relations Board, 8 Cir., 106 F. 2d 100, 115." (Italics supplied)

The record establishes without question that the alleged acts of interference and support attributed to the petitioner were isolated, were not accompanied by any acts of discrimination, and were both unconnected with and contrary to the petitioner's policy of non-

interference and neutrality. In *Martel Mills Corporation v. National Labor Relations Board* (Decided Sept. 6, 1940, and not yet reported) the Circuit Court of Appeals for the Fourth Circuit was faced with a question similar to the issue here in that the plant superintendent had had conversations with several employees in which the union was mentioned. The Court held that the alleged acts of interference were not binding upon the employer, saying:

> "* * * *In the absence of evidence of any policy of proscribed discrimination, an employer should not be held strictly accountable for every isolated utterance of a policy-making officer concerning union activities.* Cf. National Labor Relations Board v. Union Pacific Stages, supra, at pp. 178-179; Jefferson Electric Co. v. National Labor Relations Board, supra, at p. 956. And, where the conduct and actions of the employer fail to indicate any violation of the Act, an assemblage of unrelated, unconnected expressions of opinion does not very deeply impress this Court." (Italics supplied)

In the final analysis, the question, whether an employer is responsible for the statements or actions of its employees, is one that should be determined by an application of the familiar principles of the law of agency. The fundamental rule that should govern here was stated by this Court as early as 1827 in *The General Interest Insurance Company v. Ruggles*, 12 Wheat. 408, 6 L. Ed. 674 (1827), where it was said (12 Wheat. 412, 413):

> "* * * He is not to be considered as the general agent of the owner for all purposes whatsoever, that may have connection with the voyage. He is a special agent for navigating the vessel, and can neither bind nor prejudice his principal, by any act not coming properly within the scope and

object of such employment. *Unless the powers of agents are thus limited, no man could be safe in the transaction of any business through the agency of another.* * * * *It is a general rule, applicable to agencies of every description, that the agent cannot bind his principal except in matters coming within the scope of his authority;* * * *." (Italics supplied)

This Court expressed the same view in *Washington Gas-Light Company v. Lansden,* 172 U. S. 534, 19 S. Ct. 296 (1899), as follows (172 U. S. 544):

"The result of the authorities is, as we think, that, in order to hold a corporation liable for the torts of any of its agents, the act in question must be performed in the course and within the scope of the agent's employment in the business of the principal. The corporation can be held responsible for acts which are not strictly within the corporate powers, but which were assumed to be performed for the corporation, and by the corporate agents who were competent to employ the corporate powers actually exercised. There need be no written authority under seal nor vote of the corporation constituting the agency or authorizing the act. But, in the absence of evidence of this nature, there must be evidence of some facts from which the authority of the agent to act upon or in relation to the subject-matter involved may be fairly and legitimately inferred by the court or jury. Salt Lake City v. Hollister, 118 U. S. 256, 260; Denver & Rio Grande Railway v. Harris, 122 U. S. 597, 609; Southern Railway v. Prentice, 147 U. S. 101, 109, and cases cited at p. 110."

This case was an action for damages for an alleged libel brought against the Gas Company and several of its

officers, based upon a letter written by the general manager. As there was no evidence that the general manager had express authority to write the letter, the chief inquiry of the Court was whether such authority could be inferred by reason of his position. On that point it was said (172 U. S. 547, 548):

> "From the use of the term 'general manager' we should not be authorized to infer any such authority, nor would it be permissible to allow the jury to make a mere guess that it existed. A general manager of a business corporation, such as this gas company is, would not be presumed to have this power. The term, in our judgment, when used in connection with such a corporation, cannot, in the absence of any evidence on the subject, be presumed to mean anything more than that the person filling the position has general charge of those business matters for the carrying on of which the company was incorporated. These might include the buying of material, the employment of laborers, the supervision of their labor, the manufacture of gas, its distribution, and the general ways and means of accomplishing the object of the corporation,—all these in subordination to the board of directors and such superior officers as the board should provide."

In the well-reasoned decision of the Circuit Court of Appeals for the Eighth Circuit in *Cupples Company, Manufacturers, v. National Labor Relations Board, supra*, the agency doctrine was applied, the Court, at pages 114, 115, saying:

> "It is elementary that a principal is only bound by the acts of an agent which are within the scope of the actual, implied or apparent authority of that agent. Miss Weitzel had no actual authority from the Company to encourage or discourage member-

ships in labor organizations. There is no evidence which would support a finding that she had implied authority to do so. Implied authority is nothing more than actual authority circumstantially proved. Koivisto v. Bankers' & Merchants' Fire Ins. Co., 148 Minn. 255, 181 N. W. 580; 2 C. J. 435; Hall v. Union Indemnity Co., 8 Cir., 61 F. 2d. 85, 92. So far as her apparent authority is concerned: 'It is only acts within the scope of the apparent authority with which the principal clothes the agent, not those within the scope of the apparent authority with which the agent wrongfully clothes himself, without the assent or knowledge of his principal, that are binding upon the latter.' Chicago, St. P., M. & O. Ry. Co. v. Bryant, 8 Cir., 65 F. 969, 973. See, also, Hall v. Union Indemnity Co., 8 Cir., supra, 61 F. 2d. at page 91."

Expressed from the standpoint of a third person's right to rely on statements of an agent, it has been said that the doctrine of apparent authority can be invoked only by those knowing the agent had been permitted to exercise certain authority and who have acted in reliance thereon: *Cauger v. Gray Motor Co.*, 173 Minn. 370, 217 N. W. 347.

In the instant case there was absolutely no testimony to show that any supervisor had been permitted by the petitioner to express any views or take any action detrimental to the Union. In addition, there was no attempt to show that any employee relied upon the alleged acts of interference. Finally, on this point, there can be no presumption, such as the court below indulged in, that employees were justified in believing that the supervisors were acting as the petitioner's representatives. Employees, as well as employers, are presumed to know the law (*Midland Steel Products Company v. National Labor Relations Board*, 113 F. (2d) 800 (C. C. A. 6,

1940)), and as a result must be deemed to know not only their own rights but also the limitations imposed by law upon the conduct of their employer and its agents.

In a case such as this, where the employer has a large supervisory force which carries out the policies and orders formulated and issued by the responsible executive officers, the answer to the question as to whether the employer violated the Act through the conduct of employees who acted without authority from it, should depend upon whether the employee whose conduct is under consideration was one who determined the employer's policy in connection with the matters involved. That was the test sanctioned by this Court in *National Labor Relations Board v. Sands Manufacturing Company, supra,* and it should be applied here, as it is the only one practicable where there are many employees who exercise supervisory, as distinguished from management, functions.

The decision of the Court below is completely out of harmony with the law of agency and should not be affirmed unless, under the National Labor Relations Act, employers are to be saddled with liability without fault.

In closing our argument on this point, it is fitting to observe that the Order in this case in effect holds that the petitioner has violated a statute because its supervisory employees expressed opinions which they had a constitutional right to hold and express. None of the remarks which the Board objects to was of a coercive or threatening character. They were at the most expressions of partiality. If the individuals had a constitutional right to their views and opinions, as they unquestionably did, the petitioner surely would have no right to police them.

As a result of the decision of this Court in *Thornhill v. State of Alabama,* .... U. S. ...., 60 S. Ct. 736 (1940), it is no longer open to question that the legislative branch of the Government in dealing with problems arising from industrial disputes may not impair the effective exercise of the right to discuss freely industrial relations and employment conditions.

The Circuit Court of Appeals, in a case decided since the decision in this case and the opinion in *Thornhill v. State of Alabama, supra,* has held [in *Midland Steel Products Company v. National Labor Relations Board,* 113 F. (2d) 800 (1940)] that an expression by the employer's general superintendent of an opinion derogatory to unions was not a violation of the Act as it was within the constitutional guarantee of free speech. It is noteworthy that the Court cited and relied upon *Thornhill v. State of Alabama, supra.*

Similarly in *National Labor Relations Board v. Ford Motor Company,* (Decided Oct. 8, 1940, and not yet reported) the Court below again sustained the right of freedom of speech from infringement by the Board. The Court held that Mr. Ford was entitled under the law to hold and express his views on labor unions and that the Ford Motor Company had a right under the First Amendment to distribute the pamphlets setting such views forth so long as the distribution thereof was not connected with any threat of discharge or discrimination. The keystone of the opinion on this point is in the following passage, where it was said:

> "* * * *If the concept that an employer's opinion of labor organizations and organizers must,* because of the authority of master over servant, *nearly always prove coercive, ever had validity, it is difficult now to say,* in view of the National Labor Relations Act, its adjudication as constitutionally

valid, its strict enforcement by the National Labor Relations Board, and the liberal attitude of the courts in construing it so as best to effectuate its great social and economic purpose, *that the concept is still a sound one.* The servant no longer has occasion to fear the master's frown of authority or threats of discrimination for union activities, express or implied." (Italics supplied)

Very recently the Circuit Court of Appeals for the Seventh Circuit held, in *National Labor Relations Board v. Lightner Publishing Corporation,* 113 F. (2d) 621 (1940), that statements derogatory to unions in the respondent's publications could not be relied upon by the Board to show bad faith in negotiations with its employees' bargaining agent, saying (page 626):

"No expression of an employer's opinion, as such, on any subject can constitute an unfair labor practice; and obviously the National Labor Relations Board has no authority to interfere with an employer's untrammeled expression of views on any subject."

It has been aptly said in a recent case that the constitutional right of free speech in regard to labor matters is just as clearly a right of employers as of employees, and if the Act purported to take away this right, it could not stand: *Continental Box Co., Inc., v. National Labor Relations Board,* 113 F. (2d) 93 (C. C. A. 5, 1940). In that case the employer issued a statement of its policy the night before a consent election was to be held among its employees. The Board seized upon the statement as a violation of the employees' rights to be free from interference, restraint and coercion. In holding that the employer had a right to publish the statement of its policy as long as it was not a use of

economic power to coerce the employees, the Court said at pages 96 and 97:

> "We do not agree with the Board that the statement of policy the company sent out just before the election, in any manner violates the letter or spirit of the Act or, standing alone, is any evidence that the employer was undertaking to interfere with or dominate its employees or any association they would form. The constitutional right of free speech (Const. amend. 1) in regard to labor matters is just as clearly a right of employers as of employees, and if the act purported to take away this right, it could not stand. Bryan Thornhill v. State of Alabama, 60 S. Ct. 736, 84 L. Ed. . . . .; National Labor Relations Board v. Express Publishing Company, 5 Cir., 111 F. 2d 588; Magnolia Petroleum Company v. National Labor Relations Board, supra; Humble Oil and Refining Company v. National Labor Relations Board, supra. But the enforced statute has not undertaken at all to interfere with or limit the right of free speech. All that the statute prohibits is domination, interference and support. The employer has the right to have and to express a preference for one union over another so long as that expression is the mere expression of opinion in the exercise of free speech and is not the use of economic power to coerce, compel or buy the support of the employees for or against a particular labor organization."

To hold the petitioner responsible for the statements which its employees are alleged to have made in this case is to command the petitioner, *at its peril*, to limit and infringe the freedom of speech its employees possess as free men. Neither the Board nor any court should have authority to impose that duty upon an employer.

All questions of freedom of speech aside, the activities proscribed by Section 8(1) of the Act are *interference, restraint and coercion.* The test against which an employer's statements on union matters must be measured is whether the statements are calculated to interfere with, restrain or coerce the employee to whom they are directed in his exercise of his rights under the Act. That is substantially the test prescribed by this Court in *Texas & New Orleans Railroad Company v. Brotherhood of Railway & Steamship Clerks,* 281 U. S. 548, 50 S. Ct. 427 (1930) where the Court, speaking through Chief Justice Hughes, said at page 568:

> "* * * The intent of Congress is clear with respect to the sort of conduct that is prohibited. 'Interference' with freedom of action and 'coercion' refer to well understood concepts of the law. The meaning of the word 'influence' in this clause may be gathered from the context. *Noscitur a sociis. Virginia v. Tennessee,* 148 U. S. 503, 519. The use of the word is not to be taken as interdicting the normal relations and innocent communications which are a part of all friendly intercourse, albeit between employer and employee. 'Influence' in this context plainly means pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls 'self-organization.' The phrase covers the abuse of relation or opportunity so as to corrupt or override the will, and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives for the purposes of this Act than in relation to well-known applications of the law with respect to fraud, duress, and undue influence * * *."

Under the principle there established, there is not one instance in this record of any statement or action on

the part of any responsible officer of the company that is a violation of the Act. Had the Court below followed the *Texas & New Orleans* case (as it did in *Midland Steel Products Company v. National Labor Relations Board, supra,* and should have here) it would have had to hold that there was no interference, restraint or coercion under Section 8(1) nor any interference or domination under Section 8(2).

Conclusion.

For the reasons hereinabove stated, the petitioner submits that the judgment of the Court below should be reversed with directions to set aside the Order of the Board in its entirety.

Respectfully submitted,

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APPENDIX.

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449; 29 U. S. C. A. Section 151, *et seq.*) are as follows:

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, im-

pairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SECTION 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid for protection.

SECTION 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6(a), an employer shall not be prohibited from per-

mitting employees to confer with him during working hours without loss of time or pay.

* * * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

SECTION 9 (a). Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

SECTION 10 (c). The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the

Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

SECTION 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

NO. 73

H. J. HEINZ COMPANY, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

REPLY BRIEF FOR H. J. HEINZ COMPANY, PETITIONER.

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NATIONAL LABOR RELATIONS BOARD, Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

REPLY BRIEF FOR H. J. HEINZ COMPANY, PETITIONER.

Introduction.

The brief for the National Labor Relations Board is shot through with misstatements of fact and extravagant inferences which could be easily refuted but, inasmuch as we have presented the Court with a fair statement of the ultimate facts in our original brief, a detailed analysis of the charges in the respondent's brief is not necessary. However, we believe that we are entitled to advise the Court that many of the statements in the respondent's brief are contrary to its own findings of fact.[1]. In addition, it is proper to observe that many of

1. For example, in its present brief (page 19) the statement is made that the Association was formed by five employees led by Ben-

the statements in the respondent's brief are followed by an elaborate string of references to the record, many of which prove to be either beside the point or contradictory of the assertion in the brief.[2] The Board has also resorted to the dubious device of lifting extracts of testimony from their context and of joining unconnected events, for the purpose of painting an unfavorable picture of the petitioner. For example, on page 72 of the brief, the statement is made that

> "as a ground for its elimination of all details of the grievance machinery from the agreement, petitioner *stated* (sic) that it would be unfair 'to the minority party among the employees' to intimate that 'these 800 men who belong to the Association * * * could do anything through the Union grievance committee.'"

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nett, *"a group leader* * * * who thereafter became its president." With this may be compared the Board's finding (R. 205) that Bennett was a *"mechanic* in the Can Department." Again, on a most important issue in the case, viz., whether or not an agreement was actually reached between the petitioner and the Union, the Board, (Footnote 33, page 44) seeking to avoid a flat admission by one of its principal witnesses, declares that the testimony of Wilner, the Union's attorney, was "simply to the effect that by posting the memorandum petitioner became 'bound' by it as 'matter of psychology.'" This is not only a deliberate misstatement of the testimony of Wilner; it is directly contrary to the Board's finding of fact (R. 219) that Wilner "admitted that the respondent (petitioner) 'by posting the agreement on its bulletin boards on August 15, 1937, became bound thereby.'" The Board has also seen fit, on many occasions, to make statements contrary to its own evidence. Thus, in Footnote 22, on Page 34, it states that group leaders are not eligible to membership in the Union, disregarding the terms of the Union's proposed contract (Board Exhibit "6") that "working foremen" would be covered and the provisions of the Bulletin Agreement which excluded only those foremen and assistant foremen who were paid on a *salary* basis.

2. A glaring example of this practice appears on pages 20 and 21 of the respondent's brief, where the statement is made that a "number of employees testified that they signed the petitions only because of the fear of discrimination aroused by the foremen and supervisors." In support of this extravagant charge, eighteen references to the record

If we examine the record references in support of this remarkable assertion, it will be found that it is pieced together from the cross-examination of Wilner, attorney for the Union, who testified, in substance, that he desired to have the grievance procedure set forth in the bulletin for psychological reasons, viz., so that all of the employees would know that they had the right to come to the Union grievance committee. The statement which the Board attributes to the petitioner is, in fact, a conglomeration of extracts from questions of the cross-examining counsel, who was asking such questions to elicit from Wilner an admission that the Union would not take up grievances for non-members.

We could continue these glaring illustrations, but time does not permit discussion in this reply brief of the many other similar inaccuracies and we will now turn to a few points suggested in the argument for the respondent, which may merit a brief reply.

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are given, apparently for the purpose of creating the impression that eighteen employees were forced to sign Association petitions. Without going into a detailed analysis of the testimony, we desire to direct the Court's attention to a few glaring errors in the statement. Among other things, it appears, from the references cited by the respondent (a) that only fifteen employees were involved; (b) that at least four of them testified that they did *not* sign the petition; (c) that of the four, three testified that they were *not* asked to sign; (d) that of the fifteen, four (female employees) testified that they signed the petition after a meeting in their department which had been addressed by an advocate for the Union and an organizer for the Association, while one testified that she attended the same meeting but could not remember whether she had signed the petition before or after the meeting was held; (e) that two of the five girls gave some specific reason for signing, other than coercion or fear; (f) that another of the fifteen testified that a watchman (not a supervisor) asked him to join the Association and that he did so "under the impression that it would be the best thing to do to keep out of trouble"; and (g) that another testified that he signed because of a "rumor" that he would be better off.

I.

The Opinion of This Court in International Association of Machinists, Etc. v. National Labor Relations Board Is Not Controlling in This Case.

The argument of the respondent under Part I of its brief, which deals with the issues discussed under Part II of the petitioner's brief, relies almost exclusively upon the opinion of this Court in *International Association of Machinists, etc. v. National Labor Relations Board,* No. 16 of this Term, decided November 12, 1940. As we analyze that opinion, the Court was dealing with the validity of an Order of the Board which required the abrogation of a "closed shop" agreement between an employer and a union which the Board found to be employer-dominated. The petitioner in the case (the dominated Union) attacked the validity of the order on the ground that there was no proof that the employer had authorized or ratified the coercive tactics of certain supervisory officials who had taken part in the organization of the dominated Union. This Court disposed of the intervening Union's argument by pointing out that the Act was designed to remove "all taint of an employer's compulsion" from the processes of collective bargaining and that since the facts established that there had been coercion, the Board could properly hold that the dominated Union had not been the free choice of the employees. From this it followed that neither the employer nor the dominated Union should have the right to insist upon enjoying the fruits of a contract which had its origin in compulsion.

The situation in the instant case is strikingly different. Here, there is no question of an employer or a Union asking the retention of the fruits of an illegal contract or an illegal status. The Order in this case is an Order to cease and desist from alleged improper acts,

viz., (a) from interference, restraint and coercion, and (b) from recognition of the Association. It is our point that an order to cease and desist from *past* practices (which were discontinued long before the complaint was issued) cannot be justified, where it is shown that the employer did not authorize the practices, but on the contrary, promptly repudiated them and prevented their recurrence.

At the risk of repetition, may we again point out that the argument of the Board evades the most salient facts on this issue. Conceding that supervisory employees may have indulged in improper acts and speeches in the early days of the organizing drive, it must not be forgotten that, as soon as the Union made a complaint of alleged interference to a responsible executive of the petitioner, he called the supervisors together and repeated earlier instructions (issued by the superintendent) to the effect *that the petitioner insisted upon absolute neutrality and would not tolerate any coercion of its employees.* More than that, he reported his action to the Union officials and they expressed their satisfaction with his instructions. It is most unfair for the Board to say, as it does, that the petitioner failed to do more than instruct its supervisory officials, when it clearly appears from the Board's own witnesses that the Union was advised of the instructions, approved them and did not request the petitioner to take any further action. It is equally unfair to infer that the instructions were ineffective. They were issued to the supervisors with the stamp of authority of the manager of the Pittsburgh plant. Moreover, although they were issued several days *before* the strike, there is no evidence in the record that any of the alleged improper acts were repeated *after* Riley's instructions had been given.

If the alleged improper acts had any coercive effect, that effect was certainly dissipated by the strike, the

election agreement, the election itself and the subsequent recognition of the Union. So far as the Association is concerned, the record clearly shows that it was entirely replaced by the Union, at least from the standpoint of employer recognition. If its organizers decided to keep it alive as a social group, in the hope of recognition in the distant future, they surely had the right so to do. Their hopes and desires, in any case, ought not be used as an excuse to find that the employer is dealing with or recognizing an organization which, so far as the employer is concerned, has ceased to exist as a bargaining agency.[3]

On these facts, the cease and desist order in this case becomes punitive and not remedial. We cannot believe that this Court, in its opinion in the *Machinists* case, intended to rule that the doctrine of responsibility would be relaxed to the point of holding an employer accountable for discontinued acts, which it never authorized, which it repudiated, and which it prevented from recurring. "A court of equity will not grant an injunction to restrain one from doing 'what he is not attempting and does not intend to do.'" *Virginia Electric and Power Company v. National Labor Relations Board,* C. C. A. 4. (Decided November 12, 1940.)

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3. In this connection, the Board says, at page 71 of its brief, that the petitioner would not name the Union in the bulletin because such action might impair the Association's efforts to achieve majority designation and recognition, and that petitioner was avoiding "any action which might cause the Association 'to quit.'" The record shows that no such reasons were ever assigned by the petitioner. On the contrary, the testimony shows that when Riley (petitioner's officer) was told by the Board attorney that when one Union lost an election, it ought to "quit", Riley replied "maybe they should. I don't know. It's up to them to decide, not me. They can't *misuse* me to make them quit."

II.

The Board's Argument on the Question of the Written Contract Fails to Give Effect to the Fact That There Was a Written Contract in This Case.

The petitioner's original brief has apparently demonstrated to the Board that its Order in this case is far more sweeping than an order to commit to writing agreements which have been already reached. As we pointed out, the petitioner and the Union, long before the complaint in this case was filed, came to an understanding on the subject of wages, hours and working conditions and committed that understanding to the form of a written memorial. We also demonstrated that in the course of the negotiations substantial concessions were granted by the petitioner to the Union, and that the Union itself openly boasted, after the bulletin had been posted, that it had obtained a firm contract, which contained many advantages for the employees. As a consequence, the Board's order in this case unquestionably has the effect of undoing a firm agreement, of compelling the parties to re-negotiate with respect to matters which have already been decided, and of forcing the employer to embody the results of the *new* negotiations in a particular form of contract desired by the Board if so requested by the Union.

To escape these enormous consequences of its Order, the Board has attempted to argue that no contract was ever reached. To attain this end, it has been forced to indulge in misstatements and omissions. For example, it says that the petitioner was not bound by the contract and that it could ignore it at will. This contention shows a thorough disregard for the express provision of the bulletin that "the wage rates and other

conditions hereinabove set forth shall remain in effect until further notice".[4] Again, the Board attempts to create the inference that the Union's name did not appear in the published bulletin and that the published bulletin did not accord full recognition to the Union. How can this be squared with the opening recital in the bulletin that "we have bargained with the certified collective bargaining agency for our employees * * * and the following understanding has been reached?" How can it be reconciled with the provision in the closing paragraph that *"in case of any disagreement, any employee or group of employees has the right to refer the matter to the Canning and Pickle Workers Local Union No. 325, in accordance with the grievance procedure now in effect between the Union and the Company."*

Another instance of evasion is the statement in the footnote on page 44 of the respondent's brief that the "testimony of Wilner, the Union's attorney, upon which petitioner relies, is simply to the effect that by posting the memorandum, petitioner became 'bound' by it as a 'matter of psychology.'" Wilner definitely testified that in the course of the negotiations, the Union obtained many concessions; moreover, in answer to the question, "You know that the Company, by posting that contract and that signed statement on the bulletin board, became bound by that?" replied "Yes." *Wilner's reference to the "matter of psychology" had nothing to do with the question of the binding effect of*

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4. On this point, the Board betrays the fact that it is not satisfied with any labor agreement which is not for a definite term. Is this not inconsistent with its admission that the Union in this case did not desire a contract for a fixed period? Is this not also inconsistent with the Board's studied disclaimer of any intention to dictate the substantive terms of the bargain? Compare also the Board's frequent condemnation of the petitioner because it declined to incorporate a detailed description of the grievance procedure in the contract.

the contract but related only to the Union's reason for desiring a written contract (and according to Wilner) for a definite term. In other words, Wilner was admitting in his testimony that there was a binding written contract but stating that, for psychological reasons, the Union desired a particular form of writing. This was once admitted by respondent, for in its Decision it definitely found as a fact (R. 219) that Wilner admitted the existence of the agreement.

The Board also stresses the fact that, in its view, the Union did not accept the agreement as a binding contract, because on August 17, 1937 (Board Exhibit "23") one of its leaders wrote to the petitioner that the bulletins did not, in the opinion of the Union "constitute an agreement *within the intent of the memorandum of understanding*" (viz., the election agreement) between the Union and the Company. It is quite clear that the writer of this letter was not serving notice that the Union did not agree to the terms of the bulletin, for he also wrote that "we realize that the concessions gained for the employees in the H. J. Heinz Company were the direct results of our efforts." It is equally clear that the Union objected to the form of the bulletin, not because it was not a binding agreement, but because the Union believed it did not conform to the understanding embodied in the election agreement. Moreover, in this the writer of the letter was mistaken, for it will be recalled that when the election agreement was prepared, counsel for the Union wanted the term "written agreement" and subsequently agreed to the omission of the word "written." It is also plainly apparent from literature circulated by the Union after the bulletin was posted and from articles in the Union's own news organ, that it considered the bulletin as a binding contract (see petitioner's original brief, pp. 26 and 27).

In the last analysis, the Board is forced to concede that there was a contract in this case and that it was reduced to writing. From this it follows that the Board's Order in this case must be treated as an arrogation of the right to cancel the agreement, and to compel the parties to begin negotiations anew.

One more point in the Board's treatment of the contract issue deserves mention. The Board consistently disclaims any intention to compel trade agreements, insisting that it merely desires the petitioner to embody its labor agreement in the form of instrument which the Board considers customary in labor relations. This oblique approach has been fashioned in the hope of eliminating from consideration the petitioner's point that the legislative history of the Act, the utterances of Congress, and the structure of the Act itself demonstrates that Congress did not intend to compel an employer to make a contract against his will. Despite the Board's assurances on this point, its method of approach to the question shows that it believes that it has the right to prescribe the terms of a labor agreement. Thus, it assigns as reasons for its order the following alleged circumstances: (1) that the petitioner suddenly raised the point of its policy against signed, formal agreements, after a long period of negotiation with the Union;[5] (2) that the petitioner employed dilatory tactics in the course of the negotiations; (3) that the petitioner did not want a contract for a fixed term; (4) that Anderson allegedly repudiated an understanding already reached by Riley and Shinabarger; (5) that the petitioner at-

5. In this connection, it may be pointed out that the Board's inference to this effect is plainly belied by its own evidence that while the election agreement was being negotiated, and before the process of bargaining began, the petitioner insisted on striking out the word "written" from the election agreement. Moreover, in its Decision, the Board found that petitioner took this attitude from the beginning (R. 224, footnote 12).

tempted to hold down the bargaining power of the Union; (6) that the petitioner refused to incorporate the grievance procedure in the final bulletin and insisted upon phraseology not approved by the Board; and (7) that the petitioner insisted on incorporating in the bulletin a statement that all employees had, as provided by the Act itself, a right to present grievances to the employer.

It is quite clear that these factors, upon which the Board counts so heavily, concern the negotiations themselves and the ultimate substantive terms of the contract. If the Board may thus review the process of negotiation, condemn the employer because of its "hard-hearted" attitude and criticize not only the wording but also the substantive terms of the contract, then it may, with equal propriety, dictate the content of any labor agreement, according to the circumstances under which it is written.

The Board's extended argument on the construction of the Act, requires no answer, inasmuch as the issue has been explored in our original brief. However, in closing our reply, it may be advisable to mention the Board's argument that it is entitled to compel a formal written agreement in this particular case, by virtue of its remedial powers under the Act, even though the Act itself does not compel such agreements. As we have pointed out in our original brief, the Board's powers are co-extensive with the substantive provisions of the Act and there is no reason for supposing that Congress intended to delegate its legislative powers to the Board. In the second place, the argument proves too much. Thus, the Board argues, at page 67 of its brief, that "to avoid the sterility to which petitioner's persistence in its attitude would condemn future bargaining between the parties, the Board may make specific provision against one aspect of petitioner's failure to manifest the requisite

good faith." We interpret this to mean that, since the Board does not approve of the petitioner's attitude in the course of negotiations or of its methods of bargaining, it believes it has the power to prevent the petitioner from manifesting the same attitude and using the same methods in the new negotiations ordered by the Board. Why, then, may not the Board prescribe that the new negotiations be handled by the petitioner's President, that they be completed in ten days, that a ten per cent. wage increase be given, and that the contract be a formal, sealed instrument, with a 2-year term?

As this Court said in *Republic Steel Corporation v. National Labor Relations Board et al.*, No. 14 of this Term, decided November 12, 1940:

> "This language [Section 10 (c)] should be construed in harmony with the spirit and remedial purposes of the Act. We do not think that Congress intended to vest in the Board a virtually unlimited discretion to devise punitive measures, and thus to prescribe penalties or fines which the Board may think would effectuate the policies of the Act. We have said that 'this authority to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices even though the Board be of the opinion that the policies of the Act might be effectuated by such an order.' We have said that the power to command affirmative action is remedial, not punitive. *Consolidated Edison Company v. National Labor Relations Board*, 305 U. S. 197, 235, 236. See, also, *National Labor Relations Board v. Pennsylvania Greyhound Lines*, 303 U. S. 267, 268. We adhere to that construction.

"In that view, it is not enough to justify the Board's requirements to say that they would have the effect of deterring persons from violating the Act. That argument proves too much, for if such a deterrent effect is sufficient to sustain an order of the Board, it would be free to set up any system of penalties which it would deem adequate to that end."

It is just as logical for the Board to use its remedial powers as an excuse for writing the contract, as it is to use them as a pretext for abrogating an existing agreement.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1939

H. J. HEINZ COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 996

H. J. HEINZ COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

1. The decision below is in direct conflict with the decisions of the Circuit Court of Appeals for the Seventh Circuit in *Inland Steel Company* v. *National Labor Relations Board*, 109 F. (2d) 9; *Fort Wayne Corrugated Paper Co.* v. *National Labor Relations Board*, decided March 28, 1940; and *The M. H. Ritzwoller Company* v. *National Labor Relations Board*, decided May 8, 1940, on the question whether the refusal of an employer to embody an understanding reached with a labor organization in a signed written contract if requested so to do by the labor organization constitutes a refusal to bargain collectively within the meaning of Section 8 (5) of the National Labor

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Relations Act.[1] The court below held that petitioner's refusal to sign a contract, after an agreement had been reached, constituted a refusal to bargain, while the Circuit Court of Appeals for the Seventh Circuit held in the decisions cited that an employer may, consistently with the Act, refuse to enter into any written contract, even though an agreement has been reached.[2]

Petitioner contends (Pet. 17–20) that the decision below is probably also in conflict upon this point with *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45. There this Court, in a general discussion of the Act, stated that "The Act does not compel agreements between employers and employees." But the court below did not hold that the Act compelled the reaching of any agreement; it merely held that if the employer and his employees do reach an agreement the duty to bargain collectively imposed by Section 8 (5) of the Act encompasses

[1] The Seventh Circuit nevertheless enforced the Board's order in the *Fort Wayne* case, upon the ground that the requirement that the employer reduce understandings reached to a written agreement was, under the facts of that case, a form of affirmative relief appropriate to remedy the refusal to bargain.

[2] In accord with the decision below, and in conflict with the decisions of the Seventh Circuit, are *Art Metals Construction Co.* v. *National Labor Relations Board*, 110 F. (2d) 148 (C. C. A. 2d); *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4th); *National Labor Relations Board* v. *Sunshine Mining Company*, 110 F. (2d) 780 (C. C. A. 9th).

the duty to embody their understanding in a signed written contract.

However, because of the conflict among the circuit courts of appeals, and because of the importance of the question, the Board does not oppose the granting of the writ on this issue.

2. Petitioner asserts (Pet. 13–17, 19–20) that the decision below, in holding petitioner responsible for anti-union activities of certain supervisory employees, is in conflict with *Ballston-Stillwater Knitting Co., Inc.* v. *National Labor Relations Board*, 98 F. (2d) 758 (C. C. A. 2d) and with *Cupples Co., Mfrs.* v. *National Labor Relations Board*, 106 F. (2d) 100 (C. C. A. 8th), and that it is probably in conflict with *National Labor Relations Board* v. *Sands Manufacturing Company*, 306 U. S. 332.

There is no conflict with the *Ballston-Stillwater* case. The court below held petitioner responsible for the acts of those supervisory employees whom the employees were justified in believing were acting as petitioner's representatives (R. 1147). The Second Circuit applied substantially the same test in the *Ballston-Stillwater* case. There, however, the employees in question performed such "menial tasks" as washing windows, sweeping, and emptying waste, in addition to doing mechanical work in fixing the machines. Therefore the Second Circuit did not consider it decisive that the employees "supervised in the sense that they

handed out work, inspected, and gave checks to the other employees indicating the amount of work done," and it concluded that their "status was but slightly higher than that of the other employees" (98 F. (2d), at 762). In *National Labor Relations Board* v. *American Mfg. Co.*, 106 F. (2d) 61, 67, affirmed, as modified, March 11, 1940 (No. 664, this Term), decided subsequent to the *Ballston-Stillwater* case, the Second Circuit held the employer responsible for the acts of minor supervisory employees upon the same theory that was applied by the court below here.

There is no clear conflict with the decision of the Eighth Circuit in the *Cupples* case. The substance of that decision appears to be that, absent proof of actual authority in respect of labor relations, the test is whether, upon all the evidence, the employee in question could reasonably be regarded as having "apparent authority." The Board found that the employee there in question could reasonably be so regarded; the court, being of the opinion that there was insufficient supporting proof, set aside the Board's finding in that respect (106 F. (2d) at 114–116).

The *Sands* case plainly is not in conflict with the decision below. Indeed, the *Sands* case has nothing whatever to do with an employer's responsibility for anti-union activities engaged in by supervisors. The question dealt with in the portion of the *Sands* opinion referred to by petitioner

(Pet. 20) was whether certain high officials of the company, who locked out a group of employees in August, did so because those workers belonged to a union. This Court held that certain anti-union remarks made in June by supervisors who were not in a policymaking position could not be used to prove a company policy accounting for the subsequent lockout by the company executives.

The general question of the responsibility of employers for the activities of supervisory employees is, however, of frequent occurrence, and is of substantial importance in the administration of the Act. Accordingly, the Board does not oppose review of this question.

For the reasons stated, the Government does not oppose the granting of the writ.

Respectfully submitted.

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MAY 1940.

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 73

H. J. HEINZ COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Sixth Circuit (R. 1140–1152) is reported at 110 F. (2d) 843. The findings of fact, conclusions of law, and order of the Board (R. 197–229) are reported at 10 N. L. R. B. 963.

JURISDICTION

The decree of the Circuit Court of Appeals (R. 1140) was entered on April 3, 1940. The petition for a writ of certiorari was filed on May 9, 1940, and granted on June 3, 1940 (R. 1152). The juris-

diction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether there is substantial evidence to support the Board's findings that petitioner

(a) interfered with its employees in the exercise of their organizational rights, in violation of Section 8 (1) of the National Labor Relations Act;

(b) dominated, interfered with, and contributed support to the Heinz Employees Association, in violation of Section 8 (2) of the Act;

(c) refused to bargain collectively in good faith with Canning and Pickle Workers, Local Union No. 325, in violation of Section 8 (5) of the Act.

2. Whether, under the circumstances of this case, the Board validly found that petitioner's refusal to embody terms agreed upon by it and the Union in a signed agreement, constituted a refusal to bargain collectively in violation of Section 8 (5) of the Act.

3. If not, whether the Board acted within its discretion in issuing an order, on the basis of petitioner's refusal to bargain in other respects, directing petitioner to embody terms that may be agreed upon as a result of future collective bargaining between it and the Union in a signed agreement, if the Union so requests.

4. Whether, even though petitioner (following an election) recognized the Union, and did not recognize the Association, as the exclusive bargaining representative, the Board acted within its discretion in issuing an order directing petitioner to withdraw all recognition from, and completely to disestablish, the Association as a representative of any of petitioner's employees for purposes of collective bargaining.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set out in Appendix F, *infra*, pp. 84–87.

STATEMENT

Upon proceedings had pursuant to Section 10 of the National Labor Relations Act,[1] the Board is-

[1] These were: a charge (R. 3–4) and amended charge (R. 4–5) filed by the Canning & Pickle Workers, Local Union No. 325, affiliated with the A. F. of L. (herein called the Union); complaint and notice of hearing (R. 5–9), a copy of which was served on the Heinz Employees' Association (herein called the Association), a labor organization alleged in the complaint to be dominated by petitioner (R. 9–10, 8); answer by petitioner (R. 11–17); hearing before the trial examiner; order transferring the proceeding before the Board (R. 87–88); findings and order issued by the Board (R. 88–114); a notice to show cause why said findings and order should not be vacated (R. 116); order setting aside the findings and order (R. 118–119); order directing issuance of proposed findings of fact, proposed conclusions of law, and proposed order (R. 120–121); proposed findings of fact, proposed conclusions of law and a proposed order issued by the Board (R. 121–147), exceptions thereto by petitioner (R. 148–192); and oral argument before the Board by counsel for petitioner and counsel for the Union (R. 192, 194–195, 196).

sued its findings of fact, conclusions of law and order (R. 197–229).

The Board's findings of fact with respect to the unfair labor practices are detailed under Point I of the Argument (*infra*, pp. 17–47). In brief outline, the Board found that the H. J. Heinz Company, herein called the petitioner, through its plant superintendent, foremen, and other supervisory employees, interfered with, restrained, and coerced the employees in the exercise of their right to join the Union, in violation of Section 8 (1) of the Act (R. 203–205); that various of petitioner's foremen and group leaders solicited employees to join the Association, organized to compete with the Union (R. 205–210); that petitioner dominated and interfered with the formation and administration of the Association and contributed support to that organization, in violation of Section 8 (2) and (1) of the Act (R. 212); that despite such practices, and despite petitioner's recognition of the Association as the exclusive representative of its employees, the Union was selected over the Association by a majority of the employees in an election conducted by the Board (R. 201–203); and that the Union thereby became the exclusive representative of all the employees in a concededly appropriate collective bargaining unit (R. 212–213).

The Board also found that, after negotiating with the Union for some two weeks on the basis of a written form of collective agreement, without

objecting to such form, petitioner suddenly informed the Union that it did not intend to enter into any signed agreement with the Union and insisted upon this "policy" over the Union's violent objections (R. 215–216); that historically, under the "practice and procedure of collective bargaining," the "collective agreement has normally taken the form of a written contract * * * signed by the parties" (R. 220); that "petitioner's refusal to accept the full procedure of collective bargaining in this case" arose from its desire "to deny to the Union the status and prestige to which it was entitled as the recognized party to a collective agreement" and "to impress its employees with the benefits of membership in the Association and to convince them that no benefits had been gained by virtue of membership in the Union" (R. 221–222); that petitioner's refusal to sign an agreement with the Union deprived the Union of advantages highly important to a bargaining agency (R. 222); that the Union never abandoned its demand or its desire for a signed agreement according full recognition to the Union as the collective bargaining representative of the employees (R. 224); and that petitioner's refusal to embody any agreed terms in a signed agreement between it and the Union, under the circumstances, constituted a refusal to bargain in violation of Section 8 (5) of the Act (R. 220–224).

The Board found that, in addition to its refusal to enter into a signed agreement, petitioner likewise failed to bargain collectively in good faith, in violation of Section 8 (5) and (1), in that it withheld from the Union the status and recognition of an equal during the negotiations, repudiated and changed the terms of an understanding reached and approved as final, on its behalf, by negotiators whom it represented to have full authority, adopted dilatory tactics although informed that they were harmful to the Union, and refused, without reason, to permit a memorandum posted on its bulletin boards to describe the procedure for adjusting grievances which it had accepted during the negotiations (R. 214–225).

The Board's order (R. 228–229) requires petitioner to cease and desist from the unfair labor practices found and, as affirmative action designed to effectuate the policies of the Act, (a) to withdraw all recognition from the Association as the representative of any of petitioner's employees for purposes of collective bargaining and completely to disestablish the Association as such representative; (b) to bargain collectively with the Union as the exclusive representative of the employees and, if an understanding is reached concerning rates of pay, wages, hours or other conditions of employment, to embody such understanding in a written, signed agreement, if requested to do so by the Union; and (c) to post appropriate notices.

Thereafter, petitioner filed in the Circuit Court of Appeals for the Sixth Circuit a petition to review and set aside the Board's order. The Board answered, praying that its order be enforced against petitioner. On April 3, 1940, the Circuit Court of Appeals rendered its decision (R. 1140–1152) and entered a decree (R. 1140) directing that the Board's order be enforced in full.

SUMMARY OF ARGUMENT

I

The Board's findings of fact as to the unfair labor practices, concurred in by the court below, afford "no occasion here to review the evidence in detail." *National Licorice Co.* v. *National Labor Relations Board,* 309 U. S. 350, 357–358. A brief summary will suffice.

1. (a) When the Union first sought to organize the petitioner's employees in April 1937, petitioner's ~~employees for purposes of collective bargain~~ supervisors engaged in widespread interference with and coercion of the employees in the exercise of their organizational rights. The superintendent of the entire plant, Heinrich, upbraided employees for attending Union meetings and warned that "the A. F. of L. is no good". Various foremen cast aspersions on the Union leadership and membership, used the threat of discharge to support the thesis that "you cut your own throat" by joining, and advised that the Employer would shut the plant rather than recognize the Union.

(b) The Association, formed by employees led by one of petitioner's group leaders, was actively aided by petitioner's supervisory staff. Brooks, in charge of the entire spaghetti building, assembled 40 employees during working hours, attacked the A. F. of L., and urged his listeners to form an unaffiliated organization. Brooks recruited one Armstrong to solicit signatures to Association petitions during working hours without loss of pay. Subsequently, Brooks suggested to Armstrong the names of other employees whose aid would "help you get the names faster." Hayes, regarded as the assistant superintendent, directed a campaign by various foremen to enroll the employees in the Association. The foremen actively participated in the Association's campaign, on occasion utilizing threats against the employees' jobs to obtain signatures. Various group leaders spent a good deal of their working hours soliciting for the Association; and Association solicitors roamed throughout the plant, openly in the presence of the foremen, who took no steps to stop this use of petitioner's time.

2. The Board's findings as to the activities of petitioner's supervisory staff, even without reference to the group leaders, are clear warrant for the Board's order since petitioner "may fairly be said to be responsible" for such interference with its employees in the exercise of their organizational rights. *International Association of Machinists etc.* v. *National Labor Relations Board,* No. 16, this

Term, decided November 12, 1940. All of petitioner's foremen, whether in charge of entire departments or particular production operations, have authority to "recommend" hire and discharge as well as wage increases. They "did exercise general authority over the employees and were in a strategic position to translate to their subordinates the policies and desires of the management" and the employees had just cause to believe, as they did, that such supervisors "were acting for and on behalf of the management." *Machinists* case, *supra*. Petitioner "took no effective means to stop repeated violations of the Act" during a period when widespread intimidation and solicitation were taking place in its plant and producing the effects which the Act seeks to prevent. Nor did petitioner voluntarily undertake to dissipate those effects. Its instructions to the supervisors were far from a repudiation of their activities; on the contrary, they were confined to the supervisors themselves. Petitioner took no action "to communicate its alleged neutrality to the employees" or to inform them that the supervisor's efforts were not exerted on behalf of the management and would be resisted and corrected by the management.

The group leaders, too, are members of the supervisory staff, with directive and disciplinary power over the other employees, including the recommendation of discharge. They were regarded by the employees as representatives of the

management. The Board was therefore justified in its conclusion that the Employer was likewise responsible for their coercive activities.

3. Petitioner, during negotiations with the Union, refused to embody agreed terms in a signed agreement with the Union on the sole ground that to do so was against its "policy." The Union protested vigorously that petitioner's unexplained refusal to sign any agreement violated the Act; but since the only choice appeared to be to accept as a substitute a unilateral statement or to call a strike, the Union agreed to aid in drafting a memorandum of the terms already agreed upon by all parties. Petitioner, despite the fact that it had represented that its negotiators had full authority to act for it, repudiated the memorandum thus drawn and interposed a long, unexplained, delay even though informed that the Association was circulating rumors that petitioner would never reach any agreement with the Union. Petitioner through its president, Heinz, "revised" the memorandum in such a way as to omit the name of the Union from the first paragraph, to eliminate the statement that "the Company recognizes and will deal with * * * [the Union] as the exclusive bargaining agency for the employees" and substitute therefor the statement that any group of employees could present grievances. It also struck out all mention of the grievance machinery to which, admittedly, it had no objection. Evasive

and conflicting reasons were offered for its refusal to name the Union as the representative which negotiated the unilateral statement; none of these reasons had prevented petitioner from stating in its "agreement" with the Association, prior to the election which the Union won, that "we have recognized the Heinz Employees Association as the collective bargaining agent for our employees", or from naming the members of the Association's committee. Its reasons for omitting to mention the grievance machinery were patently empty. The Board found that petitioner did not "accept the full procedure of collective bargaining" because of its desire "to deny to the Union the status and prestige to which it was entitled as the recognized party to a collective agreement" and thus "to impress its employees with the benefits of membership in the Association and to convince them that no benefits had been gained by virtue of membership in the Union."

II

This Court has recognized that the "manifest objective in providing for collective bargaining" was "the making of contracts with labor organizations" and that "the purpose of the statute was to compel employers to bargain collectively with their employees to the end that employment contracts binding on both parties should be made." *Consolidated Edison Co.* v. *National Labor Relations*

Board, 305 U. S. 197, 236; *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 342.

It is the position of the Government that one aspect of this obligation to bargain collectively under normal circumstances is the embodiment of agreed terms in a signed trade agreement to which the employer and the authorized representative of the employees are parties. The support for our position is found in several circumstances bearing directly upon the intention reasonably to be attributed to Congress at the time the Act was passed.

The "practice and procedure of collective bargaining," given legal sanction by the Act, had developed through the course of years and, in 1935, had well-defined attributes made familiar through exhaustive studies by governmental agencies and students of labor relations and economics. It was a matter of uniform and authoritative definition that "collective bargaining" included a willingness and obligation to enter into a signed trade agreement if terms acceptable to both parties were reached. It was generally known that employers who announced a "policy" against signed agreements with labor unions were motivated by a desire to prevent effective organization of their plants or to weaken or destroy a representative already selected. The substitute offered, when any was, usually consisted of unilateral bulletin board statements of policy, similar to that offered by petitioner here, which

were recognized as not the product of genuine collective bargaining.

Congress, moreover, had before it and relied upon the considerable administrative practice under prior legislation likewise designed to protect and enforce the rights of employees to self-organization and collective bargaining. Under that practice, the duty to bargain collectively uniformly included an obligation to embody agreed terms in a signed trade agreement. Any Congressional intention to depart from these administrative precedents, by lessening the content of the duty to bargain collectively, is expressly negatived by the legislative history of the present Act. The reenactment of the phrase "bargain collectively" constitutes, under the circumstances, an approval and adoption of the preceding administrative practical interpretation.

Finally, it is to be observed, informed opinion in the field is uniformly to the effect that it is "through the trade agreement * * * that collective bargaining becomes an agency of industrial order." Such agreements are uniformly thought of as a code whereby the rule of "law, democratically made by employees as well as employers, has been substituted for the rule of economic force and warfare" in industrial relations. This situation may well be contrasted with that existing under a unilateral statement of policy. There, neither the union nor the employer accepts the

responsibility of abiding by the "terms" of such a statement. The union is at a serious disadvantage in retaining members; its energies are dissipated in a continuing struggle to obtain recognition; it is beset by insecurity. The history of numerous industries attests to the fact that where the trade agreement prevails, stoppages due to strikes and other forms of friction are notably infrequent. This normal final step in the "practice and procedure of collective bargaining" constitutes, as a matter of fact, the most effective means whereby collective bargaining accomplishes the purposes of the Act. Giving effect to the foregoing considerations, the Circuit Courts of Appeals for the First, Second, Fourth, Eighth, and Tenth Circuits, as well as the court below, have held that an employer's refusal to embody agreed terms in a written trade agreement constitutes a refusal to bargain collectively in violation of the Act.

The Board's order, moreover, would be valid in any event. The evidence fully supports the Board's finding that, regardless of whether Section 8 (5) imposes a duty to embody agreed terms in a signed agreement, petitioner's refusal of such an agreement in this case rested upon its desire to disparage the Union as an appropriate representative of the employees by denying it a recognized status as such representative. Petitioner's stand on the signed contract question, when viewed in the light of its course of conduct, plainly is shown to be

merely one phase of its efforts to avoid genuine collective bargaining. The provision of the order in question here is "adapted to the situation which calls for redress." *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 348.

The claim, contrary to the finding of the Board, of a technical acquiescence by the Union in petitioner's refusal to sign an agreement, is equally insubstantial as a basis for challenging the validity of the order. Upon this record, there is little room for a supposition that in future bargaining petitioner would consent to a signed agreement even if the Union insisted that it discharge that obligation. The reasonable anticipation that petitioner will impose a block to the realization of the objectives sought through the collective bargaining procedure, warrants a preventative order. Orders identical with the provision here under discussion have been enforced by the Circuit Courts of Appeals for the Fourth and Ninth Circuits, expressly without reference to whether the employer violated the Act by refusing to embody terms in a signed agreement.

III

The Board's order that petitioner withdraw all recognition from, and disestablish, the Association as the representative of any of its employees is plainly valid. Petitioners continue to recognize the Association as a potential representative of employees, qualified under Sections 9 (a) and 8

(5) to demand recognition as the exclusive representative, if designated by a majority, of the employees. Petitioner's refusal to name the Union as the representative which negotiated the bulletin board "agreement" was defended on the ground that such action might impair the Association's efforts to achieve majority designation and exclusive recognition. Its reasons for refusing a signed agreement plainly had roots in the same soil. The members of the Association have continued to meet and pay dues, and, at the time of the hearing, regarded the Association as a labor organization qualified to represent employees. And the Association, during petitioner's negotiations with the Union, sought to weaken the Union's position as the employees' representative by circulating rumors "that the company never intended to come to any agreement" with the Union. Finally, in its brief in this Court, petitioner discloses that it still regards reassurance of its employees—by informing them that the coercive activities of its supervisors, aiding the Association and obstructing the Union, were not condoned and not welcomed by the management—as none of its concern. The employees certainly have ample grounds for believing that petitioner's relations with the Association have merely been suspended. The Board was therefore warranted in finding that it was necessary for petitioner to announce unequivocally that its candidate was permanently outside the field of selection.

ARGUMENT

I

THE BOARD'S FINDINGS OF FACT CONCERNING THE UNFAIR LABOR PRACTICES ARE SUPPORTED BY THE EVIDENCE

The Board's findings of fact as to the unfair labor practices, concurred in by the court below, afford "no occasion here to review the evidence in detail." *National Licorice Co.* v. *National Labor Relations Board,* 309 U. S. 350, 357–358; *International Association of Machinists etc.* v. *National Labor Relations Board,* No. 16, this Term, decided November 12, 1940.[2] A brief summary of the evidence will suffice to show that the findings are amply supported.

1. (a) *Interference, restraint, and coercion in violation of Section 8 (1).*—When the Union first sought to organize petitioner's employees in April 1937 (R. 253), Heinrich, the superintendent of the

[2] Accord: *Cincinnati, etc., Ry. Co.* v. *Interstate Commerce Commission,* 206 U. S. 142, 154; *Illinois Central, etc., Railroad* v. *Interstate Commerce Commission,* 206 U. S. 441, 456. See, also, *General Pictures Co.* v. *Electric Co.,* 304 U. S. 175, 178; *United States* v. *Chemical Foundation,* 272 U. S. 1, 14; *Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515, 542. Petitioner pays lip service to the principle that the validity of the Board's findings on conflicting evidence will not be inquired into here (Br. 59). But petitioner's extensive reliance upon evidence rejected by the Board, and its almost complete disregard of the evidence upon which the Board's findings are based, indicates that petitioner still contends that the findings are unsupported because "the Board did not believe its witnesses" (R. 1146).

entire plant (R. 691, 260, 1064), appealed to the "loyalty" of various employees, upbraided them for attending Union meetings, warned that the Union did not have jobs to dispense, and advised that "the A. F. of L. is no good" (R. 272, 327–328, 394, 399–402, 422–423, 450, 457–458, 511, 772–775).[8] Hayes, one of three general foremen working throughout the plant directly under the superintendent (R. 695, 729, 871), and regarded by the employees as the assistant superintendent (R. 259, 306, 313, 333–334, 456, 756), characterized the Union leadership as "alien," stated that the president of the local was being paid by the "head" for each member signed up, and urged the employees to tell Union organizers to "go to hell" (R. 310, 451, 458–459, 872–873, 880–881). Locke, who was in charge of the entire bean building with power to recommend discharge (R. 738, 776, 514), referred to Union members as "bolsheviks," threatened that they would be "sorry," and used the threat of discharge to support his thesis that "you cut your own throat" by joining (R. 515, 529, 534, 542, 783–785). Vajentic, who had some 40 employees in the bean baking department under his supervision (R. 736, 505, 509, 524, 526, 537), told some of them that petitioner would discharge all of the employees and

[8] Petitioner relies upon Heinrich's testimony that, in each of the instances referred to, he approached the employee in question concerning other subjects but the employee immediately accused Heinrich of "picking on" him because of his Union membership (R. 702, 707, 710, 712).

shut the plant rather than recognize the Union; Vajentic also repeatedly interrogated employees concerning the Union and told the Croatian employees under him that unionization would result in loss of insurance and Social Security benefits (R. 510–511, 528–529, 532–534; see also R. 261). Brooks, who was in charge of the entire spaghetti building (R. 755, 315), called a meeting of 25 or 30 girls and told them that if the Union, a "money-making scheme," organized the plant, their work would not be as steady as theretofore; Brooks also questioned various employees concerning their sympathies (R. 351–352, 359; 315–317, 326, 330).

These activities plainly were not of a "casual, isolated nature" (Br. 9). The evidence establishes widespread similar activities on the part of other foremen and foreladies in charge of large groups of employees (R. 351, 352–353, 359, 365, 370–371, 373, 447, 449, 470–471, 499–500, 794, 863; see R. 753).

(b) *Interference with, and support of the Association in violation of Section 8 (2) and (1).*—The Association was formed by five employees led by Bennett, a group leader (note 19, p. 31, *infra*) who thereafter became its president; their motivation consisted of dislike for the A. F. of L. rather than a desire to bargain collectively (R. 723, 727, 901, 917–922, 981, 985–988, 990, 992–994, 995, 997–1000, 1002–1004). The supervisory staff thereupon set out to assure the Association's success. Brooks (*supra,* this page), during working hours, assem-

bled some 40 employees in his department, attacked the A. F. of L., and urged his listeners to form an unaffiliated organization (R. 315–316). Brooks recruited Armstrong, an employee with anti-union predilections, to solicit signatures to Association petitions during working hours without loss of pay, assuring Armstrong that use of company time for this purpose was all right (R. 316–320, 322–323, 325); two other foremen confirmed to Armstrong Brooks' view that Association activity during working hours was unobjectionable (R. 319, 320). Subsequently, Brooks complained to Armstrong that "the names aren't coming in fast enough" and suggested other employees whose aid would "help you get the names faster" (R. 320–321).[4] There is testimony, which the Board credited, as it might, that Hayes (*supra*, p. 18) directed a campaign by various foremen, including Foreman Palivoda, to enroll the employees in the Association (R. 556–557, 792–793). Hayes also threatened one employee with discharge unless he signed the Association petition and boasted to another that "we have 1,300 signatures" (R. 310, 483–484; see R. 873, 875). Other foremen actively participated in the Association's campaign, on occasion utilizing threats against the employees' jobs to obtain signatures.[5] A number of employees testified that

[4] Neither Brooks nor the other two foremen, Mozeyka and Kearns, testified at the hearing.

[5] Foreman Locke (R. 80–81, 526–528, 530–531, 547, 551, 554–555, 776–781, 786–788, 790, 832, 837–838); Foreman Vajentic

they signed the petitions only because of the fear of discrimination aroused by the foremen and other supervisors (R. 295–296, 358, 405–406, 408, 414, 416, 421, 425, 426, 431, 435, 438, 444–445, 493–494, 506, 517, 536, 542).[6] Group leaders Gerhard, Bennett, Sipple, Paul, Greenier, and Murphy (n. 19, pp. 31–32, *infra*) apparently spent a good deal of their working hours soliciting for the Association (R. 292, 294; 297–298, 301, 311–312, 472, 488–489; 366–367; 375–376, 379–380, 394, 889, 894–896; 447–449, 471, 850, 854; 492, 493, 496–498; 723, 727, 724, 738, 721, 725, 802–803). Association solicitors roamed throughout the plant (R. 299, 320, 329, 335–336, 341–342, 346–349, 353–354, 359–361, 371, 410–413, 418–419, 428, 431, 432, 434, 436, 438–439, 444, 472–473, 491, 503, 539, 540–541, 549, 813–815, 836, 839–840).[6] The solicitation went on openly in the presence of the foremen, who took no steps to stop the use of petitioner's time in this way or to return the solicitors to their places of work (R. 338, 347,

(R. 505–508, 512–513, 524, 537); Foreman Marzolf (R. 404, 408, 409, 413, 897); Forelady Schirer (R. 403–406); Foreman Bruns (R. 356); Forelady Topnick (R. 364–366); Forelady Gazzo (R. 418–421, 425, 427, 430, 434, 436, 818, 825); Foreman Kropf (R. 440–442, 855); Foreman Schultz (R. 479–480, 855–856); Foreman John White (R. 545–547); Foreman Dave White (R. 548–549, 843); Forelady Griebel (R. 548, 550).

[6] Compare petitioner's statement (Br. 75) that there is "no proof" that the activities of the supervisors had "any possible coercive effect."

355, 360–361, 410–413, 535, 539, 541, 795, 839–840). Forelady Griebel interpreted Heinrich's "neutrality" instructions (*infra*, pp. 29–31) as forbidding the supervisors to interfere with Association solicitation (R. 831). Hargraves, a "personnel man" for petitioner (R. 210, 258, 280, 759, 460, 561), who attended foremen's meetings (R. 760) and apparently had power to recommend discharge (R. 280, 759, 560, 561), announced with evident pleasure that an unaffiliated union organized by the Association's attorney had won over the A. F. of L. in an election at a neighboring plant and "I don't see why the Heinz Company could not do it" (R. 459–460, 469). Hargraves also identified the Union organizers as "Croatian Communists" who were "getting their orders from Moscow" (R. 558). It is apparent that these activities on behalf of the Association far exceeded in intensity and extent the "promotion efforts" held to sustain the Board's findings in *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 250, 262.[7] See *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 460–461.

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[7] The present case involves the additional factor of actual participation of group leaders (N. 19, pp. 31–32, *infra*) in the organization of the Association. Bennett was the Association's principal organizer (*supra*, p. 19), presided at the first two meetings (R. 265, 302–303, 335, 345, 473, 933–934) and served as the only president the organization had prior to the hearing (R. 901, 940). Sipple was secretary of the Association, a departmental representative, and a member of the Association's bargaining committee which negotiated an

A majority of the employees eventually signed Association petitions (R. 44, 931, 942). When both the Union and the Association requested recognition as the employees' representative, petitioner proposed an election between them, but the Union would not agree to appear on a ballot with what it regarded as a company-sponsored rival (R. 245, 248, 256, 564, 565, 906, 948, 1032, 1035, 1036, 1039–1040, 1069–1070). Compare *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453. A strike by the Union for recognition closed the plant; petitioner then recognized the Association as the employees' exclusive representative, entered into an "agreement" with that organization, and mailed a copy to each employee (R. 44–48, 249, 911, 943–944, 953–957, 1005–1006, 1044–1046, 1097).

2. *Petitioner is responsible for the activities of its superintendent, department heads, foremen, and group leaders.*—Petitioner contends that the Board's findings[8] as to the activities of its super-

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agreement with petitioner (R. 46, 911, 940, 951–952, 1017–1019). Hargraves, the "personnel man" (*supra*, p. 22), and Group Leaders Capan and Greenier attended Association meetings, while Group Leaders Hiebner, Lager, and Bergaski (see R. 722, 725, 742) signed Association petitions (R. 265–266, 340–341, 344, 376–377, 473, 908–909).

[8] Petitioner does not contend that the evidence does not support the Board's findings. But its statement that "this is not a case where the employer has indulged in actual or threatened discrimination" (Br. 58, 89–90), which has no record basis, must be the result of ignoring the evidence summarized above (pp. 17–22, *supra*).

visory staff, during working hours, do not warrant an order against it in the absence of proof that such activities were authorized or ratified by petitioner (Pet. Br. 54–90).[9] This aspect of the case is controlled by the decision of this Court in *International Association of Machinists etc.* v. *National Labor Relations Board,* No. 16, this Term, decided November 12, 1940.

Concededly (Pet. Br. 56–57), no portion of the Board's order turns solely upon the propriety of its finding (R. 206–207) that petitioner is responsible for the activities of its group leaders.[10] At this point, therefore, the activities of the plant superintendent, department heads, and foremen[11]

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[9] Petitioner also intimates, without arguing the point, that the First Amendment to the Constitution guaranteed to the supervisors a right to engage in these coercive activities (Br. 85–88, 60, 62, 72). This question was neither raised in the court below nor in the petition for certiorari. See *Crown Cork Co.* v. *Gutmann Co.*, 304 U. S. 159, 161. Compare *Elkland Leather Co., Inc.* v. *National Labor Relations Board*, No. 496, this Term, certiorari denied November 18, 1940.

[10] The Board stated that "our conclusions with respect to the respondent's relationship to the Association are not predicated upon the actions of group leaders alone. There is evidence in the record of illegal activities by employees whose supervisory capacity is not denied" (R. 207).

[11] Superintendent Heinrich testified that the management recognizes no such classification as "assistant foreman" (R. 724; see R. 798, 800). Petitioner, nevertheless, refers to such a classification (Br. 56, 58). We are unable to discover which of the persons whose activities are here in question (~~*supra*, pp.~~ N. 12, p. 25, *infra*) are placed in this category by petitioner's counsel.

are assumed to afford sufficient basis for the order of the Board provided only that petitioner may be held responsible for them.

The generic term "foreman" is used in petitioner's plant to designate persons who have charge of entire departments, or even entire plant buildings, as well as persons in control of employees engaged in a particular production operation.[12] It is admitted (Pet. Br. 56, 71) that all of these per-

[12] Locke was in charge of the entire bean building (R. 738, 776, 514); Brooks was in charge of the entire spaghetti building (R. 755, 315, 351–352); Braun was in charge of the entire branch-house stock department (R. 862, 866); Hayes supervised production throughout the plant directly under Superintendent Heinrich, discharging functions whose nature caused him to be known as the "assistant superintendent" (R. 259, 306, 313, 333–334, 456, 695, 729, 756, 871); Vajentic was head of the bean baking department, a subdivision of Locke's domain, with some 40 employees under him (R. 735–736, 738, 776, 505, 509, 524, 526, 537); Marzolf was in charge of the entire preserve department (R. 404, 409, 413); Forelady Schirer was in charge of the labeling and wrapping division of the preserve department, with 22 employees under her (R. 403–404); Bruns was head of the spaghetti filling department, in which some 40 girls worked (R. 350); Palivoda was in charge of the entire bottling department with 212 employees under him (R. 365, 795, 798); Topnick was one of three foreladies in charge of the girls engaged in bottling pickles (R. 365); Forelady Gazzo was in charge of the fifth floor of the cereal department with 16 girls working under her (R. 418, 817); Krup was head of the distillery department (R. 440, 719–720); Schultz was foreman of the painters (R. 479), John White of the employees engaged in cleaning beans (R. 545–546, 808), Dave White of the employees engaged in packing beans (R. 548, 842), and Griebel was forelady in the same department with 21 girls under her (R. 548, 831).

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sons have authority to "recommend" hire and discharge (R. 761–762), and the record establishes the potency of this power.[13] They can also recommend wage increases (R. 870–871). It is plain that they are not "merely minor supervisory employees" (Pet. Br. 59), except by comparison with petitioner's executives, who are not "supervisory employees" at all.[14]

This Court in the *Machinists* case held that the determinative question, as to the validity of the Board's order, was whether the evidence supported the Board's conclusions that the employees' choice had in fact been interfered with and that "the employer may fairly be said to be responsible" for

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[13] Superintendent Heinrich testified that Foreman Krup (or Kropf) "on several occasions said 'I have to get rid of that man. He doesn't do what I tell him to do.' And that particular day he called me up and he said, 'I am going to fire Lukitsch'" (R. 719–720). An employee named Pavlakovich, upon asking Heinrich for a transfer to another department, was told that unless he could obtain the approval of the "foreman of the department," Heinrich could not help him (R. 717). Many of Foreman Vajentic's men had been hired "through his [Vajentic's] efforts" (R. 735; see R. 761). An employee testified that Hargraves was a foreman at the time of the hearing and that his "word is as good as Mr. Heinrich's to fire anybody" (R. 280). Another testified that all hiring and firing is done through the personnel department but that "each foreman is entitled to fire, if they see fit" (R. 313).

[14] The record contains no reference to any "supervisory employees" higher in rank than the department heads and foremen, with the single exception of Superintendent Heinrich.

such interference.[15] In the case at hand, petitioner cannot well deny that the coercive weight of the activities engaged in by its superintendent, department heads, and foremen, derived from the authority—petitioner's authority—which they exercised over the other employees. Here, just as in the *Machinists* case, the supervisors "did exercise general authority over the employees and were in a strategic position to translate to their subordinates the policies and desires of the management" and "the employees would have just cause to believe" that such supervisors "were acting for and on behalf of the management." Petitioner's contention (Br. 70–85) that, in addition, "authorization" or "ratification" is essential, cannot withstand analysis.[16] It would,

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[15] The Court noted that the problem did not turn on "technical concepts pertinent to an employer's legal responsibility to third persons for acts of his servants" and cited with approval *Consumers Power Co.* v. *National Labor Relations Board*, 113 F. (2d) 38, 44, where the Circuit Court of Appeals for the Sixth Circuit stated that acts of coercion accomplished through supervisory employees justified an order even in the absence of "prior authorization or subsequent ratification."

[16] In support of its contention that common-law agency principles should be applied in all their rigor, petitioner cites five cases (Br. 77–81). None of them are entitled to any credit on this issue before this Court. In *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 339–342, the issue was whether remarks made by supervisors, in June, constituted evidence that higher management officials, who closed the plant in late August, were motivated in fact by anti-union reasons. This Court held that since the supervisors did not occupy policy-making positions, their remarks could not be used to prove management

if not rejected, furnish an opportunity for bringing to bear upon any single employee the full economic weight of his employer through the activities of those whose suggestions carry the threat of coercive force solely by reason of their position in the hierarchy of management. Under such circumstances, the Board would be powerless to prevent ruthless invasion, if not total destruction, of rights which this Court has termed "fundamental."

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policy which in turn could be used to prove motive for a subsequent action by company executives. Here, quite to the contrary, the issue is whether coercive activities by supervisors—exercising the employer's disciplinary powers—constituted coercion by the employer. It should be noted that, on the same day as the *Sands* decision, this Court in the *Fansteel* case approved findings that Section 8 (2) was violated by "promotion efforts" of the employer, consisting in part of coercive solicitation by minor supervisory employees. *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 250, 262. The *Ballston-Stillwater* and *Martel Mills* cases in all probability are not representative of the present governing rule in the Second and Fourth Circuits. Compare *Ballston-Stillwater Knitting Co.* v. *National Labor Relations Board*, 98 F. (2d) 758 (C. C. A. 2d), with *National Labor Relations Board* v. *American Manufacturing Co.*, 106 F. (2d) 61, 64 (C. C. A. 2d), modified and affirmed, 309 U. S. 629; *Martel Mills Corp.* v. *National Labor Relations Board*, 114 F. (2d) 624 (C. C. A. 4th), with *National Labor Relations Board* v. *Mathieson Alkali Works, Inc.*, 114 F. (2d) 796, 799 (C. C. A. 4th). See Board's brief in the *Machinists* case, at pp. 35–36. These cases, together with *Link Belt Co.* v. *National Labor Relations Board*, 110 F. (2d) 506 (C. C. A. 7th), and *Cupples Co., Mfrs.* v. *National Labor Relations Board*, 106 F. (2d) 100 (C. C. A. 8th), insofar as each is not distinguishable on its own facts, cannot be considered to have been correctly decided in view of the *Machinists* decision.

National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33.

The fact that petitioner at last instructed its foremen not to interfere with the employees' self-organization (Pet. Br. 60–65)—a factor not present in the *Machinists* case—is scarcely material.[17] It is the coercive effect upon the employees that is decisive. The Circuit Courts of Appeals, as noted in our brief in the *Machinists* case (Bd. Br. 32–37), have placed upon the employer an affirmative obligation to prevent misuse of his power by those whom he has placed in positions of authority.[18] Such an ob-

[17] The instructions given by Superintendent Heinrich prior to the strike (Br. 60) were admittedly ineffectual. The Board found that this may have been attributable in part to the fact that Heinrich himself took an active part in the anti-union campaign (R. 210–211; *supra*, pp. 17–18). It was reasonable for the Board to believe that petitioner's foremen and higher officials would emulate Heinrich's actions rather than accept his words at face value. Vice-President Riley's meeting with the foremen on May 21 (Pet. Br. 60–61) occurred after the campaign had long proceeded unchecked and at a time when its objective had virtually been attained. President Heinz's intervention (Pet. Br. 62–64) came only after the strike and election, when the Association's cause had been lost, at least temporarily (*infra*, pp. 70–73), and when there was no further immediate occasion to influence the employees' choice.

[18] See, e. g., *Consumers Power Co.* v. *National Labor Relations Board*, 113 F. (2d) 38, 44 (C. C. A. 6th); *National Labor Relations Board* v. *Mathieson Alkali Works, Inc.*, 114 F. (2d) 796, 799 (C. C. A. 4th); *National Labor Relations Board* v. *American Mfg. Co.*, 106 F. (2d) 61, 64 (C. C. A. 2d), modified and affirmed, 309 U. S. 629; *Humble Oil & Refining Co.* v. *National Labor Relations Board*, 113 F. (2d) 85, 92 (C. C. A. 5th); *Swift & Co.* v. *National*

ligation must be imposed upon the employer if the freedom which the Act guarantees shall exist within his industrial domain. No difficulties of performance, or other considerations, have been shown to be sufficiently meritorious to justify thwarting the purposes of the Act for want of such an obligation. And, in any event, mere instructions to supervisors such as were given here cannot remove the basis for concluding that coercive activity in violation of the instructions is nevertheless coercion "for which the employer may fairly be said to be responsible." See *Oughton* v. *National Labor Relations Board,* decided November 19, 1940 (C. C. A. 3d). Petitioner "took no effective means to stop repeated violations of the Act" (*Swift & Co.* v. *National Labor Relations Board,* 106 F. (2d) 87, 93 (C. C. A. 10th)) during a period when widespread intimidation and solicitation were taking place in its plant and producing the effects which the Act seeks to prevent. Nor did petitioner voluntarily undertake

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Labor Relations Board, 106 F. (2d) 87, 93 (C. C. A. 10th); *National Labor Relations Board* v. *Ford Motor Co.*, 114 F. (2d) 905, 911–912 (C. C. A. 6th).

In *Oughton* v. *National Labor Relations Board*, decided November 19, 1940 (C. C. A. 3d), the court said: "Our attention is called to evidence offered by the petitioners that the foremen were expressly ordered not to engage in anti-union activities. * * * But the supervisory employees in the instant case had definite indicia of authority. It is inevitable that, under the circumstances, their remarks should carry to rank and file employees the impression that they were speaking for the management." The court then quoted from the decision of the court below to the effect that the employer had taken no step "to communicate its alleged neutrality to the employees" (R. 1146).

to dissipate those effects. The instructions to the supervisors were not an "express and unequivocal repudiation" (Br. 71) of their activities. On the contrary the petitioner, despite disregard of its instructions, confined its announcements to the supervisors themselves. It took no action "to communicate its alleged neutrality to the employees" (R. 1146) or to inform them that the supervisors' efforts, supported as they were by petitioner's powers, were not exerted on behalf of the management and would be resisted and corrected by the management. Indeed, petitioner's reply (Br. 75–76) to the suggestion of the court below that means were readily available had petitioner in fact desired to remove the effects of the supervisors' activities, shows that petitioner still regards reassurance of the employees as none of its concern. Petitioner is scarcely in a position to challenge the Board's conclusion that the order was necessary to dissipate the effects of, and to prevent repetition of, coercion accomplished through the exercise of petitioner's economic power.

And even if petitioner did, at long last, put an end to overt acts of coercion in its plant, the cease and desist order has valid basis in the prior violations. *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197, 230; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.,* 303 U. S. 261, 271.

The Court's decision in the *Machinists* case likewise supports the Board's finding (R. 206–207; see p. 24, *supra*) that petitioner is responsible for

the activities of its "group leaders." [19] The record establishes that these employees, too, are members of the supervisory staff.[20] Superintendent Heinrich testified that group leaders "see to it that the people under them are doing their work properly * * * they are right on the job, and it is their duty to see that it is done" and that they "directed what [the employees] did * * * and just generally supervised the work there * * *" (R. 753–754, 726). The uniform testimony of the employees, too, establishes that these supervisors issued orders directing and controlling the employees while at work and called them to

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[19] The group leaders with whom we are here concerned (see pp. 19, 21, 22–23, *supra*) are Greenier (R. 721, 341, 447, 451–452, 454–455, 471, 475, 851–852), Hiebner (R. 722, 376), Gerhard (R. 723, 803, 806, 292), Capan (R. 724, 341, 473–474), Sipple (R. 725, 1019, 345, 368), Murphy (R. 725, 493, 496) Bergaski (R. 725), Lewandowski (R. 725), Bennett (R. 727, 290–292, 333, 337), Bogoski (R. 742), Powell (R. 738, 375–376, 379–381, 394), Schwartz (R. 744), Beljan (R. 745), and Zotter (R. 745).

[20] Petitioner asserts (Br. 56) that group leaders "are not regarded as supervisors by the management (R. 753, 754)." This statement, not supported by the references cited, is contrary to the evidence. Superintendent Heinrich testified that there were some 250 supervisory employees in the plant—a number which petitioner accepts (Br. 56, 59)—and that some 112 of these are foremen or foreladies, the remainder being "all hourly workers" (R. 728). It is apparent that the approximately 138 "hourly" supervisors are the group leaders: Heinrich could not have been referring to "assistant foremen," for he testified that the management recognizes no such classification (R. 724); in any event, petitioner concedes that the persons whom it terms "assistant foremen" (see note 11, p. 24, *supra*) are salaried employees (Br. 56).

task for mistakes or other shortcomings (R. 290, 292, 296–297, 298, 304, 345, 368, 376–377, 380, 451–452, 454–455, 465, 496–497, 753–754, 850–851, 867–868, 870, 890, 892). There is evidence that the group leaders had power to recommend discharge (R. 333–334, 455, 474, 721, 863–864, 900). It is also plain that the employees regarded the group leaders as representatives of the management.[21]

We submit that the Board could reasonably conclude (R. 206–207), on this evidence, that the position and authority of the group leaders were such as to give to their activities the backing of petitioner's power and prestige. The wisdom of the Board's conclusion becomes even more clear when viewed in the light of the fact that the group leaders could make use of their directive and disciplinary powers—derived from petitioner—so as to

[21] One employee testified that he regarded as a boss "everybody that directs and gives me orders to carry out to do my work" [*sic*] and that whether such a person is paid by the hour or month is immaterial (R. 381–382). The "source of orders" is what the employees regard as significant (R. 386). Another employee testified that he considered his group leader to be a "boss," which he defined as "one that can order them around and make them do as they show them to * * *" (R. 454). Another testified that "If they are given power to direct our duties from the time we punch in to the time we punch out they are bosses regardless whether they work themselves" (R. 476). Concerning Murphy, a group leader (R. 725), another employee testified that "the word from him to do anything was the same as from any of the bosses"; and that the men looked up to Murphy as a "boss," which he defined as "somebody that gives orders. He gets orders that he in turn gives to somebody else" (R. 496–497).

discriminate against employees whose views concerning labor relations did not coincide with their own.[22]

3. *The refusals to bargain collectively, in violation of Section 8 (5) and (1).*—Petitioner's effort to break the strike (R. 74–75, 959–962, 1005–1006, 1044–1046, 1082, 1097) failed, and on June 4, 1937, all parties concerned agreed that the Board might conduct an election, with both organizations on the ballot; petitioner further agreed to bargain collectively "for the purpose of reaching an agreement affecting wages, hours, and working conditions" with the representative selected by a majority (R. 48–49, 1047–1048). The Union received 1,079 votes in the election, the Association 803 (R. 572); accordingly petitioner opened negotiations with the Union.

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[22] Petitioner asserts (Br. 57) that "both the Union and the Association admit [group leaders] to membership and that they were permitted to take part in the election which has been previously mentioned (Board's Exhibit 16; R. 48 at 49; 566; R. 475, 284)." The references do not support petitioner's statements; indeed, R. 475 establishes that Capan, a group leader (note 19, pp. 31–32, *supra*) was *not* permitted to vote and at R. 283–284 Novak testified that group leaders are *not* eligible for membership in the Union. The election agreement, in stating that "assistant foremen" were not eligible to vote (R. 49), probably referred to group leaders: Superintendent Heinrich testified that petitioner recognizes no such rank as "assistant foreman" (R. 724), and the testimony of Novak, who signed the agreement on behalf of the Union (R. 49), reveals that the term "assistant foreman" as used in the agreement, referred to hourly employees

At the first conference, held on June 17, the Union submitted a proposed contract which served as the basis of all negotiations had prior to July 1 (R. 50–55, 572–573). This contract, similar in form to contracts in effect between the Union and other employers (Bd. Exhs. 25, 26, 27), named petitioner and the Union as the contracting parties in the preamble and provided spaces at the foot for the signatures of the parties (R. 50, 55). At no time during the six or seven meetings (R. 579–580, 1052) held prior to July 1 did petitioner's representatives indicate any dissatisfaction with this type of agreement; the negotiations concerned the Union's request for a wage increase and other substantive provisions of the proposed contract (R. 573, 576, 579–580, 584, 616–618, 1052–1054). Petitioner was represented by two of its working directors, Riley and Shipabarger, who occupied

(R. 284), while the persons whom petitioner refers to as "assistant foreman" were salaried employees (Pet. Br. 56; see notes 11 and 20, pp. 24, 32, *supra*). Accordingly, the Union challenged the eligibility of at least some of the group leaders to vote in the election (R. 284, 475, 900–901, 914), and their votes undoubtedly comprise some of the 45 challenged ballots (R. 572). The group leaders' eligibility for membership in the Association is immaterial to petitioner's responsibility for their anti-Union and pro-Association activities. Compare *International Association of Machinists, etc.* v. *National Labor Relations Board*, No. 16, this Term, decided November 12, 1940, where this Court held that "the fact that they were *bona fide* members of petitioner did not require the Board to disregard the other circumstances we have noted."

important positions in the management (R. 572, 581, 738, 946, 950–951, 1028, 1064, 1075, 1119–1120, 1135–1136).[23] To resolve an apparent impasse concerning wages, Vice-president Anderson attended the conference of June 28, and, toward the close, broke his silence with an announcement that the Union could take or leave the proposal made by Riley and Shinabarger concerning wages, and that "the board of directors backed up everything that Mr. Riley and Mr. Shinabarger done, and that they had full confidence in them, and that Mr. Riley and Mr. Shinabarger had full authority to act for the board of directors" (R. 582–583, 624, 635–636).[24]

On July 1 the Union representatives agreed to submit petitioner's counterproposal concerning wages to the Union members for approval, which was obtained that night (R. 584–585, 1057–1058). Prior to the Union meeting, however, Riley and

[23] Petitioner states (Br. 62) that Riley was a superior of Superintendent Heinrich and was "a director of petitioner, in charge of its Pittsburgh plant."

[24] Petitioner's statement (Br. 6), that there is no support for the Board's finding (R. 215) that Anderson told the Union representatives that Riley and Shinabarger had full authority to act for petitioner, apparently disregards the evidence cited in the text. The court below expressly held that the finding was adequately supported by evidence (R. 1143). While Anderson testified that in fact any agreement had to be ratified by the Board of Directors (R. 1116–1117), it does not appear that either the July 14 agreement or the memorandum finally posted was ever submitted to the Board of Directors.

Shinabarger recalled Kracik, one of the Union negotiators, and announced for the first time that it was contrary to petitioner's "policy" for it to sign any agreement with the Union (R. 584–585, 642–643, 1057–1058, 1088–1089, 1121–1122). No reason for the "policy" was stated (R. 584–585, 642–643).[25] At a conference on the next day, Wilner, the Union's attorney and its chief spokesman throughout the negotiations, protested that petitioner's unexplained refusal to sign any agreement violated the Act; Wilner made it clear that the Union insisted upon a signed agreement (R. 585–586, 1055, 1059).

The only choice open to the Union, however, appeared to be to accept whatever substitute petitioner was willing to offer instead of a signed agreement, or to call another strike; under these circumstances, it was agreed that Wilner and Ebbert, petitioner's attorney, would draft a memorandum embodying the terms already agreed upon by the parties (R. 586, 1059).[26]

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[25] At the hearing, petitioner's representatives advanced as grounds for this "policy," aside from unwillingness to give any "psychological" aid to the Union, only the desirability of making all agreements, whether represented by a signed contract or a bulletin-board statement of policy, subject to immediate change rather than for a specific term (R. 1065–1066, 1124–1126, 1132, 1137). The latter reason, of course, has no bearing on the question whether or not the agreement should be signed.

[26] Petitioner attempts to spell out a waiver of a written contract by the Union (Br. 7–8, 27) relying upon (a) the

At a conference on July 14, the memorandum (R. 60–65) prepared by the attorneys was approved by Riley and Shinabarger, and it was agreed that the memorandum would be posted in the plant on the following day and a copy mailed to Wilner (R. 587–588; but see 1060–1061). The unequivocal nature of this pledge, Vice-president Anderson's assurance that Riley and Shinabarger had full au-

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testimony of Reverend Charles Rice that he had written an article (R. 76–78) stating that the Union employees, at a meeting, agreed to accept petitioner's terms, "but for no definite period, and they refused to sign a contract with the company" (R. 639); and (b) the fact that Kracik told Riley, upon the latter's announcement that petitioner would not enter into a signed agreement, that "that suited me, personally" (R. 644, 1055). The Board considered and rejected both aspects of this contention (R. 224–225). The Union's position was plainly stated by Wilner, the Union's spokesman (R. 1055), at the conference of July 2 (*supra*, p. 37). Reverend Rice—to whom petitioner refers both as "one of the Union's principal advisers and negotiators" (Br. 7, 27) and as one "who had no official status with the Union" (Br. 42)—testified that what he meant was that the terms offered by petitioner were so unsatisfactory that the employees were unwilling to accept them for any specific term, but only for the time being (R. 639–640; cf. R. 1131). Kracik testified that his remarks expressed only his personal opinion (R. 646); petitioner was not misled by this statement, since the Union took an unequivocal position on July 2 (*supra*, p. 37; cf. R. 1132–1133). Petitioner concedes that at the very first conference the Union representatives stated that any departure from the form of contract submitted—which named the Union in the preamble and provided blanks for signatures (R. 50–55)—would have to be submitted to the Union membership, as their authority did not comprehend assent to such changes (Pet. Br. 6; R. 1053).

thority to represent petitioner (*supra*, p. 36), and the absence of any mention that further approval was necessary, lead the Union negotiators to understand that the matter was finally settled (R. 624–625, 628–629). But, while the memorandum was mailed to Wilner, it was not posted; upon inquiry, Wilner was informed that Anderson had objected to certain phrases and had insisted that the entire memorandum be submitted to President Heinz, who was then out of town, for correction (R. 588, 589, 1061–1062, 1115–1117, 1132). Wilner protested that the memorandum had already been agreed upon and pointed out that the Association was circulating rumors that petitioner would never reach any agreement with the Union (R. 589, 613–614). Repeated requests by the Union obtained no results until July 29, when Wilner received the memorandum as redrafted by Heinz (R. 590).

In Heinz's "revision,"[27] the Union's name (R. 60–61) was eliminated from the first paragraph in favor of the phrase "certified collective bargaining

[27] For an accurate comparison between the memorandum agreed to on July 14 (R. 60–65) and the "revision" made by President Heinz, we must refer the Court to the typewritten copy of the revision (Board Exhibit 21) on file with the Clerk, rather than to the version printed at pages 65 to 68 of the record, which incorporates changes made later as a result of the Unions protests on August 11, including reinsertion of the Union's name in the paragraph of the memorandum dealing with grievances (R. 68, 591, 593–594). A portion of Heinz' revision, without the changes, was read into the record (R. 592).

agency for our employees;" in place of the statement that petitioner had "agreed with them as follows" (R. 61) appeared the phrase "the following understanding has been reached;" the typewritten signature at the foot of the memorandum (R. 65) was eliminated;[28] the statement that "the Company recognizes and will deal with the Canning and Pickle Workers' Local No. 325 as the exclusive bargaining agency for the employees" (R. 63) was eliminated in favor of a statement that any group of employees could present grievances (R. 592); all details of the grievance procedure were omitted, including the name of the Union, in favor of the bare statement that the employees could refer grievances "to the bargaining agency for discussion with the company" (R. 63–64, 592); and substantive terms previously agreed upon were altered in significant respects. Wilner promptly stated what was apparent, that petitioner's method of negotiation did not constitute "true collective bargaining" (R. 590–591).

At a conference on August 11 the Union objected to petitioner's aversion to naming the Union in the memorandum, to its elimination of the grievance machinery, and to other changes (R. 591–592).

[28] During petitioner's negotiations with the Association at the time of the strike, the Association's attorney advised that the employer's typewritten signature was as binding as a signature in pen and ink (R. 1015; see R. 1023). Accordingly, the "agreement" between petitioner and the Association bore petitioner's typewritten signature (R. 46–48).

Petitioner took the position that the Union's name had been eliminated to shorten the agreement; but, to the Union's observation that the phrase "certified collective bargaining agency for our employees" was as lengthy as the Union's name, its only rejoinder was that "Mr. Heinz insisted it remain this way" (R. 597).[29] Finally, after prolonged argument, the Union's name was inserted in the last paragraph of the agreement; but petitioner refused to reinsert it in the preamble, and kept out the exclusive recognition clause (R. 71, 591–593, 597).[30] Petitioner's attorney, it is true, suggested at the hearing that "the use of the union name unnecessarily might be offensive to a large part of our employees" (R. 621, 1067); but petitioner's negotiators, in their testimony, not only failed to mention this questionable reason, but also repudiated the brevity excuse given the Union at the time (R. 1109, *supra,* this page). They testified that the Union's name was eliminated because petitioner was "aggravated" and "annoyed" at the Union (R. 1099–1100), because of the "psychology

[29] It was conceded, at the hearing, that the first paragraph of the revision was as long as the paragraph for which it was substituted (R. 1119).

[30] The Union representatives believed that petitioner's maneuver was intended "to make the Heinz Employees Association stand out over and above, head and shoulders above" the Union and to publicize petitioner's opinion that the Union was not "good enough for the Heinz Company to enter into an agreement, weren't responsible enough, or something of that sort" (R. 606, 623).

of this and that," (R. 1125), in order "to get this wild colt back on the reservation" (R. 1100),[21] and "to pound some of the boys down" (R. 1107).

The Union informed petitioner in unequivocal terms that the memorandum, as finally posted in the plant on August 15 (R. 68–71), was not acceptable to it; in a letter to petitioner, dated August 17, the Union stated that the memorandum did not "constitute an agreement" and was not evidence of "bona-fide collective bargaining" but that, since the Union wanted the employees to have the benefits conferred, it would not object to posting of the memorandum, reserving its right to bring before the Board the question whether petitioner had fulfilled its obligation under Section 8 (5) (R. 71–72).

The Board's findings that petitioner did not "accept the full procedure of collective bargaining" because of its desire "to deny to the Union the status and prestige to which it was entitled as the recognized party to a collective agreement" and thus "to impress its employees with the benefits of membership in the Association and to convince them that no benefits had been gained by virtue of membership in the Union" (R. 221–222) are fully supported by the evidence reviewed above. Entirely apart from its refusal to embody accepted

[21] Riley elaborated: by "this wild colt" he meant the Union and "the way you usually break a colt is not to give them everything they want" (R. 1100–1101).

terms in a signed agreement, petitioner manifestly failed in other respects, as the Board found (R. 225), to bargain in good faith. The exclusive recognition which the Act expressly requires (Sections 9 (a), 8 (5)) was never extended to the Union;[32] petitioner did not even concede the Union's right to enter into a contract on behalf of the employees. Its present contention (Br. 17, 19), that the bulle-

[32] Petitioner's statement that in the bulletin posted "the Company recognized the Union as the representative of its employees, thereby unequivocally advising *all* the employees that the Company was prepared to accept the Union as the collective-bargaining agent for its employees" (Br. 75) is not supported by the wording of the bulletin (R. 68–71). As we have seen (*supra*, p. 40), the exclusive recognition clause was eliminated by President Heinz and was not reinserted, petitioner's substitution providing instead that "any individual employee or group of employees shall have the right at any time to present grievances to the company * * *" (R. 592, 71). There is no explanation why petitioner, even if it believed that the right of employees under Section 9 (a) to take up grievances individually should be mentioned in the memorandum, should have eliminated the exclusive recognition clause, which stated no more than the Act provides and is an almost universal provision in collective agreements. Riley's explanation that "the rights of the minority" must be protected (R. 1106–1108) does not explain how granting the Union exclusive recognition would infringe any rights of which the minority are not expressly divested by the exclusive representation provision of Section 9 (a). Congress considered the "protection of minorities" objection when it enacted Section 9 (a) and stated that majority rule was "simple and just" and that agreements between the employer and the majority representative "must apply to all." House Report 1147 (74th Cong., 1st Sess.), p. 20. (Compare Pet. Br. 35.)

tin posted on August 15 (R. 68–71) constitutes a "contract" between petitioner and the Union, is contrary, not only to the Union's view (*supra*, p. 42) but also to the inferences implicit in the circumstances. The Board found that the memorandum "was not in the form of a contract between the parties" (R. 221). The omission of the name of one of the "parties" fully supports this finding. And, in any event, that conclusion is inevitable from the testimony of Riley that the memorandum is not an agreement between the Union and petitioner, the Union having "simply negotiated the agreement for the employees" (R. 1081, 1067, 1069; *cf.* R. 610–612).[33] Compare *National Labor Relations Board* v. *Griswold Mfg. Co.*, 106 F. (2d) 713, (C. C. A. 3d); *National Labor Relations Board* v.

[33] Petitioner's contention (Br. 17–19, 26–27) that the Board's order compels rescission of an agreement now in effect is based upon at least two entirely unwarranted assumptions: (1) that the bulletin-board statement of August 15 constitutes a "contract" between the parties; (2) that an order to bargain collectively, upon request by the Union, is inconsistent with that contract.

Petitioner seeks to buttress the first assumption by stating that it is conceded in the Board's decision (Br. 18) and that the "agreement * * * is admittedly legal and binding" (Br. 17, 29). The Board expressly found that it was unnecessary to decide whether the bulletin-board memorandum constituted "an agreement binding upon the parties" (R. 219) and further found that it "was not in the form of a contract between the parties" and that Riley expressly testified that it was *not* an agreement between petitioner and the Union (R. 221). The testimony of Wilner, the Union's attorney, upon which petitioner relies (Br. 17), is simply to the effect that by posting the memorandum petitioner became "bound" by it as "a matter of psychology" (R. 608).

Louisville Refining Co., 102 F. (2d) 678, 680–681 (C. C. A. 6th), certiorari denied, 308 U. S. 568. Petitioner, in truth, refused even to name the Union as the representative which negotiated the unilateral statement, thus supplying potent evidence of an intent to "undercut its authority." *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 870 (C. C. A. 2d), certiorari denied, 304 U. S. 576. The evasive and conflicting reasons given for this refusal (*supra*, pp. 41–42) only confirm the inference of bad faith. As the Board pointed out (R. 221–222), none of those reasons had prevented petitioner either from stat-

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In its letter protesting against the memorandum the Union stated that the document "does not in our opinion constitute an agreement * * *" (R. 71–72, 630–631).

The second assumption lacks even the suggestion of any foundation. The bulletin-board statement, by its very terms, is not for any specific period of time. Obviously, therefore, either party is free to suggest that negotiations about different terms should be resumed. Compare the observation of this Court in *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 342: "But we assume that the Act imposes upon the employer the further obligation to meet and bargain with his employes' representatives respecting proposed changes of an existing contract and also to discuss with them its true interpretation, if there is any doubt as to its meaning." Petitioner's negotiators, in stressing the desirability of not having an agreement for any definite period, emphasized the need for changing its terms to meet changes in "conditions" (R. 1065–1066, 1124–1126, 1132, 1137). Wilner testified that petitioner could, at any time, take action inconsistent with the "agreement" (R. 607). And Riley and Shinabarger likewise testified that petitioner is free to alter the terms at any time (R. 1102–1103, 1112–1113, 1125, 1128).

ing in its "agreement" with the Association, at the time of the strike, that "we have recognized the Heinz employees Association as the collective bargaining agent for our employees" or from naming the members of the Association's committee (R. 44–48, 623; see R. 74–75, 957–958, 1098). But, after bargaining through six or seven conferences on the basis of a draft naming the Union in the preamble, without objecting on that score, petitioner then eliminated the Union's name upon grounds that reveal rather than conceal its animus.[34] There is unchallenged testimony (R. 660–661) that a labor organization, if it is to function effectively, must receive the credit and recognition to which it is entitled as the negotiator of terms, and that a refusal to name it denies such credit, confuses the employees, and makes possible the spreading of rumors aimed at discrediting the representative.[35] The Board could infer that petitioner's refusal to

[34] Petitioner appears to regard the Union's desire to be named in the memorandum as based on unworthy "psychological" reasons, that is, to enhance its prestige (Br. 9, 38; R. 609, 622). Although that would be an entirely appropriate reason, as petitioner's director, Riley, indicated (R. 1113–1114), Wilner testified that the Union desired "to show that we were being recognized" and feared that some of the poorly educated employees might not interpret the clause "certified collective bargaining agency under the Wagner Labor Relations Act" as petitioner's shorthand method of referring to the Union (R. 621–622).

[35] The Association was prompt to take advantage of this opportunity in the present case (*supra*, p. 39; *infra*, pp. 72–73).

name the Union aimed at these effects and thus evidenced bad faith. Other aspects of its behavior (see R. 225) point in the same direction: it repudiated terms, agreed upon after prolonged negotiation, despite its representation that the negotiators who agreed to those terms were fully authorized to act on its behalf. It interposed long, unexplained delays, although informed that they were injuring the Union. Finally, upon patently empty grounds, it struck from the memorandum all details of the grievance procedure to which, admittedly, it had no objection (R. 1063–1064).

II

PETITIONER'S REFUSAL TO ENTER INTO A SIGNED AGREEMENT WITH THE UNION VIOLATED THE ACT AND THE BOARD'S ORDER REQUIRING EMBODIMENT OF AGREED TERMS IN SUCH AN AGREEMENT IS VALID

The Board found (R. 214–224) that petitioner violated Section 8(5) and (1) of the Act by refusing to embody terms agreed upon by petitioner and the Union in a signed trade agreement. The Board's order requires petitioner to bargain collectively with the Union and, if an understanding is reached concerning wages, hours, or other conditions of employment, to embody said understanding in a written, signed agreement, if requested so to do by the Union (R. 229). This order is supported by each of two independent grounds: (A)

that, under the circumstances of this case,[36] petitioner's refusal to enter into a signed agreement violated the Act and (B) that, in any event, the Board's order constitutes an appropriate affirmative remedy for petitioner's refusal in other respects to bargain collectively.

It may be noted, at the outset, that petitioner beclouds both branches of the argument by insisting that they rest solely upon an interpretation of the Act which would require an employer "to make an agreement against his will" and would impose compulsory arbitration upon industry (Br. 50, 30–31, 37). This contention is without basis. The Board has never construed the Act as requiring an employer to accept specific demands made by a union.[37] The Board's finding and its order in the

[36] In its decision the Board quoted as "equally applicable to the facts of this case" (R. 223) findings previously made by the Board in *Matter of Inland Steel Co.*, 9 N. L. R. B. 783, likewise involving the question of whether an employer's refusal to embody agreed terms in a signed trade agreement violated the Act. One of those findings reads as follows (R. 223): "Whether there may be, in some future case, circumstances indicating that the employer there involved may under the Act decline to embody understandings in a signed agreement, we need not here decide. It is certain that we are not confronted with such circumstances in this case."

[37] It does, of course, require a good faith attempt to compose differences. The extent of the duty to bargain in good faith, imposed by Section 8 (5), has frequently been described: In *Globe Cotton Mills* v. *National Labor Relations Board*, 103 F. (2d) 91, 94 (C. C. A. 5th), the court said: "We believe there is a duty on both sides, though difficult of legal enforcement, to enter into discussion with an open

case at bar each presupposes that specific "adjustments and agreements" (*National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45) have been made, that terms have been accepted by both sides. After such an agreement has been reached, and only then, the issues here presented to the Court arise for the first time.

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and fair mind, and a sincere purpose to find a basis of agreement touching wages and hours and conditions of labor, and if found to embody it in a contract as specific as possible, which shall stand as a mutual guaranty of conduct, and as a guide for the adjustment of grievances." In *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 110 F. (2d) 632, 637 (C. C. A. 4th), the court said: "The act, it is true, does not require that the parties agree; but it does require that they negotiate in good faith with the view of reaching an agreement if possible; and mere discussion with the representatives of employees, with a fixed resolve on the part of the employer not to enter into any agreement with them, even as to matters as to which there is no disagreement, does not satisfy its provisions." Similarly, in *National Labor Relations Board* v. *Griswold Mfg. Co.*, 106 F. (2d) 713, 723 (C. C. A. 3d), the court stated: "It is obvious that an employer who enters into negotiations with a labor union representing his employees, with his mind hermetically sealed against even the thought of entering into an agreement with the union, is guilty of refusing to bargain collectively with the representatives of his employees in good faith, as required by the Act, and is therefore guilty of an unfair labor practice." The employer's discharge of his duty is to be tested, among other things, by "the persistence with which the employer offers opportunity for agreement." *National Labor Relations Board* v. *Sands Mfg. Co.*, 96 F. (2d) 721, 725 (C. C. A. 6th), affirmed, 306 U. S. 332. Compare *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 548, stating a duty to take "those preliminary steps without which no agreement can be reached," to "make reasonable effort to compose differences."

A. PETITIONER'S REFUSAL TO ENTER INTO ANY SIGNED AGREEMENT CONSTITUTED A REFUSAL TO BARGAIN COLLECTIVELY

Section 8 (5) of the Act concededly does not impose an express obligation to embody agreed terms in a contract of any kind. But this circumstance can scarcely be deemed material. Congress sought no less an objective than the protection of commerce by "removing certain recognized sources of industrial strife and unrest" by "encouraging practices fundamental to the friendly adjustment of industrial disputes" and by "restoring equality of bargaining power between employers and employees" (Sec. 1, *infra*, pp. 84–86).[38] To these ends, Congress, among other things, declared it to be the public policy of the United States to encourage "the practice and procedure of collective bargaining" (Sec. 1) and, in Sections 7 and 8 (5), Congress put strength behind that declaration by giving employees the right "to bargain collectively through representatives of their own choosing" and by making it an unfair labor practice for an employer "to refuse to bargain collectively" with the duly authorized representatives of his employees. This Court has recognized the broader purposes behind the bare words by declaring that the "manifest objective in providing for collective bargaining" was "the making of contracts with labor organizations" and that "the purpose of the statute was to compel em-

[38] See Sen. Rep. No. 573, 74th Cong., 1st Sess., pp. 1–4, 12, 13; H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 8–10, 20.

ployers to bargain collectively with their employees to the end that employment contracts binding on both parties should be made." *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197, 236; *Labor Board* v. *Sands Mfg. Co.,* 306 U. S. 332, 342.[39]

It would appear to be axiomatic that the right of employees, and the obligation of employers, to bargain collectively should be construed so as to comprehend whatever is reasonably appropriate to accomplish, and avoid frustrating, these recognized legislative objectives.[40] It is the position of the

[39] In discussing Section 8 (5) of the bill which became the Act, the House Committee on Labor stated (H. Rep. No. 1147, 74th Cong., 1st Sess., p. 20): "The fifth unfair labor practice, regarding the refusal to bargain collectively, rounds out the essential purpose of the bill to encourage collective bargaining and the making of agreements. * * * As has frequently been stated, collective bargaining is not an end in itself; it is a means to an end, and that end is the making of collective agreements stabilizing employment relations for a period of time, with results advantageous both to the worker and the employer." The Senate Committee on Education and Labor likewise said (Sen. Rep. No. 573, 74th Cong., 1st Sess., pp. 12–13): "It seems clear that a guarantee of the right of employees to bargain collectively through representatives of their own choosing is a mere delusion, if it is not accompanied by the correlative duty on the part of the other party * * * to negotiate with them in a bona fide effort to arrive at a collective bargain agreement. * * * The object of collective bargaining is the making of agreements that will stabilize business conditions and fix fair standards of working conditions."

[40] E. g., *Warner* v. *Goltra,* 293 U. S. 155, 158; *Art Metals Construction Co.* v. *National Labor Relations Board,* 110 F. (2d) 148, 150 (C. C. A. 2d). Compare, e. g., *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420; *Buttfield* v.

Government that one aspect of this right and obligation to bargain collectively under normal circumstances (see note 36, p. 48, *supra*) is the embodiment of agreed terms in a signed trade agreement to which the employer and the authorized representative of the employees are parties. The support for our position is found in several considerations bearing directly upon the intention reasonably to be attributed to Congress at the time the Act was passed.

1. The signed trade agreement as an accepted feature of "the practice and procedure of collective bargaining"

The "practice and procedure of collective bargaining" (Sec. 1), given legal sanction by the Act, had developed through the course of years and, in 1935, had well-defined attributes made familiar through exhaustive studies by governmental agencies and students of labor relations and economics. The testimony and authorities introduced into the record in this case are uniformly to the effect that the signed contract was recognized as the normal and contemplated objective of the bargaining process in this country and

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Stranahan, 192 U. S. 470. It has been held that the question whether a particular action by an employer falls within the prohibition of Section 8 (5) is one upon which the Board's determination will be final if supported by the evidence. *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134, 139–140 (C. C. A. 4th), certiorari denied, 302 U. S. 731. See *South Chicago Co.* v. *Bassett*, 309 U. S. 251.

abroad (Appendix A).[41] Employers acknowledged the signed agreement as the normal medium for the collective compact (Appendix B) and trade unions regarded the achievement of such agreements as the criterion of successful bargaining.[42] No defensible reason was advanced in justification of a failure to observe the usual business practice with reference to labor relations.

It was generally known that employers who announced a "policy" against signed agreements with labor unions, were motivated by a desire to prevent effective organization of their plants or to weaken or destroy a representative already selected

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[41] Petitioner offered no evidence to contradict that offered by the Board (R. 649–651, 653–654, 669–678, 680, 682, 685) and declined cross-examination of the Board's expert witness (R. 690).

[42] Lewis L. Lorwin, *The American Federation of Labor* (1933), p. 309; U. S. Department of Labor, Bureau of Labor Statistics, Bull. No. 618, *Handbook of American Trade Unions* (1936), pp. 17–18; Commons and Associates, *History of Labor in the United States* (1926), vol. II, pp. 179–181, 423–424, 480; John R. Commons, *Trade Unionism and Labor Problems* (1905), p. vii; John A. Ryan, *Declining Liberty in America and Other Papers* (1927), p. 210; Perlman and Taft, *History of Labor in the United States, 1896–1932* (1935), vol. IV, pp. 9–10; George G. Groat, *Organized Labor in America* (1926), p. 341; William E. Walling, *American Labor and American Democracy* (1926), vol. I, pp. 18–19; Sumner H. Slichter, in Annals of American Academy of Political & Social Science (March 1935), p. 116; see, also, *Republic Steel Corp.* v. *National Labor Relations Board*, 107 F. (2d) 472, 478 (C. C. A. 3d).

(R. 661–662, 680, 685, 687–690). The substitute offered, when any was, consisted of unilateral bulletin-board statements of policy which were recognized as obviously not the product of bargaining between the employer and a representative whom he accepted as a proper party to conclude agreements on behalf of the employees (R. *id.*; Appendix C).

Long prior to 1935, then, it was a matter of uniform and authoritative definition that "collective bargaining" included a willingness and obligation to enter into a signed trade agreement if terms acceptable to both parties were reached (Appendix D). Works contemporaneous with consideration of the Act by Congress merely expressed pervasive thought in the field when they referred to the signed trade agreement as "identical with recognition," and the "essence of union recognition," and stated that legislation "affirming the right of employees to organize must affirm also their right to bargain collectively for the purpose of making trade agreements" (see R. 656–658).[43]

These settled interpretations of the "practice and procedure of collective bargaining" were not

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[43] Perlman and Taft, *History of Labor in the United States, 1896–1932* (1935), vol. IV, p. 10; Sumner H. Slichter, *Collective Bargaining* (1935), p. 62; and Twentieth Century Fund, Inc., *Labor and the Government* (1935), p. 339. See also Sumner H. Slichter, *Annals of the American Academy*, March 1935, p. 116; National Labor Relations Board, Division of Economic Research, Bull. No. 4, *Written Trade Agreements in Collective Bargaining* (1939), pp. 16–17.

disavowed by Congress. On the contrary, the legislative committees stated the principal objective of the practice to be "the making of collective agreements" (note 39, p. 51, *supra*)." There is no support whatever for the contention (Pet. Br. 30–32) that Congress intended to exclude from the collective bargaining which the Act requires an obligation which was accepted as an indispensable feature of the precedent bargaining practice.

2. Congress knew of and approved the uniform administrative practice that the duty to "bargain collectively" comprehends an obligation to embody agreed terms in a signed agreement

Congress, in enacting the National Labor Relations Act, had before it and relied upon the considerable administrative practice under the prior legislation likewise designed to protect and enforce the rights of employees to self-organization and

" The portion quoted by petitioner (Br. 30–31) from the report of the Senate Committee plainly means what we have already conceded, namely, that the Act does not require agreement upon terms (supra, pp. 48–49). That the statement of Senator Wagner (Pet. Br. 31) likewise bears this meaning is shown by the Senator's subsequent characterization of the trade agreement as "the hallmark of recognition" and his statement that when the president of the Republic Steel Corporation "refused to sign a contract even though its terms were not in dispute, he took a position irreconcilable with the common course of business practice, and out of line with the enlightened action of the nation's largest steel company [United States Steel Co.] in obeying the law in all its implications." *New York Times*, July 25, 1937, Section 8, pp. 1, 22–23.

collective bargaining. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 266–267.[45] Under that practice, the duty to bargain collectively uniformly included an obligation to embody agreed terms in a signed trade agreement. The National Labor Board, created to administer Section 7 (a) of the National Industrial Recovery Act,[46] so held,[47] as did its successor, the first National Labor Relations Board.[48] Similarly,

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[45] H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 3, 5, 7, 15–18, 20–22, 24; Sen. Rep. No. 573, 74th Cong., 1st Sess., pp. 2, 8–9, 13, 16, 17. These reports reveal that the Committees went with painstaking care into the problems encountered under previous statutes designed to foster collective bargaining and the doctrines evolved by the administrative agencies entrusted with the task of solving those problems. The House Committee said (p. 5): "The National Labor Relations Board, following the lead of its predecessor, the National Labor Board, has enriched the body of labor law by a notable series of decisions interpreting and applying Section 7 (a)."

[46] That section provided, in part, that "* * * employees shall have the right to organize and bargain collectively through representatives of their own choosing * * *". (48 Stat. 195).

[47] *Matter of Harriman Hosiery Mills*, 1 N. L. B. 68; *Matter of Pierson Mfg. Co.*, 1 N. L. B. 53; *Matter of National Aniline & Chemical Co.*, 2 N. L. B. 38; *Matter of Connecticut Coke Co.*, 2 N. L. B. 88. See, also, *Matter of Whittier Mills Co.*, Textile Labor Relations Board, Case No. 34.

[48] *Matter of Houde Engineering Co.*, 1 N. L. R. B. (old) 35; *Matter of Denver Towel Supply Co.*, 2 N. L. R. B. (old) 221; *Matter of National Aniline & Chemical Co.*, 1 N. L. R. B. (old) 114; *Matter of Colt's Patent Fire Arms Co.*, 2 N. L. R. B. (old) 155; *Matter of Federal Mining & Smelting*

the Railway Labor Act of 1926, as amended in 1934 to impose a duty "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions * * *," was interpreted by the National Mediation Board to require signed contracts.[49] Any Congressional intention to depart from these precedents, by lessening the content of the duty to bargain collectively, is expressly negatived in the legislative history of the present Act.[50] The reenactment of the phrase

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Co., 2 N. L. R. B. (old) 481; *Matter of Atlanta Hosiery Mills*, 1 N. L. R. B. (old) 144; *Matter of St. Joseph Stockyards Co.*, 2 N. L. R. B. (old) 112; *Matter of Square D Co.*, 2 N. L. R. B. (old) 430.

[49] 44 Stat. 577, 48 Stat. 926, 48 Stat. 1184, 45 U. S. C., Supp. V, Sec. 151, 152, et seq. In its *First Annual Report* (June 1935), the National Mediation Board stated as follows (pp. 1–2):

"Three basic principles are laid down in the act as a foundation for sound labor relations on the railroads:

"1. *Written agreements.*—The relations are to be governed not by the arbitrary will or whim of the management or the men, but by written rules and regulations mutually agreed upon and equally binding on both. A positive duty is imposed on all carriers and their employees 'to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions.' And every carrier is required to file with the National Mediation Board a copy of every such contract * * *."

[50] The House Committee on Labor stated (H. Rep. No. 1147, 74th Cong., 1st Sess., p. 3) that the present Act constitutes "an amplification and clarification of the principles enacted into law by the Railway Labor Act and by Section 7 (a) of the National Industrial Recovery Act." The Committee further observed (*id.*, at p. 7) that Sections 7 and 8

"bargain collectively," without limitation or modification, constitutes under the circumstances an approval and adoption of the preceding administrative, practical interpretation. *Helvering* v. *R. J. Reynolds Tobacco Co.*, 306 U. S. 110, 115; *Hassett* v. *Welch*, 303 U. S. 303, 312; *Brewster* v. *Gage*, 280 U. S. 327, 337; *National Lead Company* v. *United States*, 252 U. S. 140, 146–147; *New York, N. H. & H. R. R. Co.* v. *Interstate Commerce Commission*, 200 U. S. 361, 401–402.

3. Embodiment of agreed terms in a signed trade agreement is necessary to effectuate the purposes of the Act

Informed opinion in the field is uniformly to the effect that it is "through the trade agreement * * * that collective bargaining becomes an agency of industrial order." [51] The National Mediation Board has stated that the absence of strikes in the railroad industry is primarily explainable "not by the mediation machinery of the Railway Labor Act, but by the existence of these collective labor contracts." [52] And this testimonial

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of the National Labor Relations Act are reenactments of "Section 7 (a), as it now appears in the National Industrial Recovery Act, * * * amplified by the specific prohibition of certain unfair labor practices, which by fair interpretation would constitute infringements upon the substantive rights of employees declared in section 7 (a)."

[51] Walton H. Hamilton, *Collective Bargaining*, in *Encyclopedia of the Social Sciences* (1926), vol. III, p. 629.

[52] *First Annual Report of the National Mediation Board* (June 1935), p. 36. See, also, *Second Annual Report of the National Mediation Board* (1936), p. 1; *Third Annual Re-*

was given prominent mention by this Court in upholding that statute. *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 555. The refusal to embody agreed terms in a signed agreement, understandable to labor only as the manifestation of an unwillingness to accept the collective bargaining process in full, may in itself frustrate the intent of Congres to remove all basis for disputes arising from resistance to self-organization and collective bargaining.[53] Fully as plain is the

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port of the Nationdl Mediation Board (1937), pp. 2–3, 20; *Fourth Annual Report of the National Mediation Board* (1938), pp. 1, 29.

[53] "So long as the majority of employees in a large number of plants wish to be represented by organizations with which the management is unwilling to sign agreements, industrial relations are bound to be unsatisfactory and strikes are pretty certain to be frequent." Sumner H. Slichter, in *Annals of the American Academy* (March 1935), pp. 119–120. Another authority is of the opinion that the "refusal to sign an agreement * * * is likely to be an indication that attitudes of conflict remain predominant and that the party refusing to sign is biding its time for a renewal of hostilities. * * *." R. R. R. Brooks, *When Labor Organizes* (1937), p. 224. The bitterly fought Inland Steel strike of 1937 was caused by the company's refusal, in advance of negotiations, to enter into a signed agreement of any kind, upon the bare plea that the Act did not require it to do so. *Matter of Inland Steel Co.*, 9 N. L. R. B. 783, 796–797. In *Matter of St. Joseph Stockyards Co.*, 2 N. L. R. B. 39, 54, the Board stated as follows: "Viewed from the other side, the main objective of organized labor for long has been the collective agreement and the history of organization and collective bargaining may be written in terms of the constant striving for union recognition through agreement. In many cases employees have left their employment and struck solely

relation of signed agreements to the prevention of strikes caused by disputes concerning terms of employment. The Congressional committees recognized this relation when they described the purpose of the bargaining process as "the making of collective agreements stabilizing employment relations for a period of time, with results advantageous to both the worker and the employer." [54]

The agreement customarily defines the terms of employment for its duration, erects machinery for the adjustment of disputes, and prescribes a procedure for renewal at expiration; in this and other ways, it exerts a strong influence against recourse to strife by either party and thus establishes its position as the foremost agency for the preservation of industrial peace (Appendix E). See *Consolidated Edison Co.* v. *Labor Board,* 305 U. S. 197, 237. It is uniformly thought of as a code whereby the rule of "law, democratically made by employees as well as employers, has been substituted for the

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because of the employer's refusal to enter into a collective agreement. An objective that has been so bitterly contested by employer and employee, that has been the cause of many long and costly strikes, must be evaluated in the light of the conflict it has produced."

[54] H. Rep. No. 1147, 74th Cong., 1st Sess., p. 20, S. Rep. No. 573, 74th Cong., 1st Sess., p. 13. Section 1 of the Act declares that the inequality of bargaining power between employers and employees burdens commerce, *inter alia*, "by preventing the stabilization of competitive wage rates and working conditions within and between industries."

rule of economic force and warfare" in industrial relations.[55]

This situation may well be contrasted with that existing under a unilateral statement of policy. Neither the Union nor the employer accepts the responsibility of abiding by the "terms" of such a statement.[56] The union is at a serious disadvantage in retaining members; its energies are dissipated in a continuing struggle to obtain recogition; it is beset by insecurity. The threat to its very ex-

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[55] See *First Annual Report of the National Mediation Board* (June 1935), p. 35. See also, e. g., John R. Commons, *Tendencies in the Trade Union Development in the United States*, in *International Labour Review* (June 1922) ("* * * an extra-legal code or industrial law * * * a constitution limiting the rights, duties, liberties, and risks of the two contracting parties"), Ethelbert Stewart, *Trade Agreements*, in *Annals of the American Academy of Political and Social Science* (Sept. 1910), p. 330 ("* * * the mutual working basis, the magna carta of each."); Commons and Andrews, *Principles of Labor Legislation* (Rev. ed., 1927), p. 129 ("* * * the supreme law of the industry"); Gordon S. Watkins, *Labor Management* (1928) ("* * * a constitution for industry"); Perlman & Taft, *History of Labor in the United States, 1896–1932* (1935), vol. IV, pp. 9–10 ("* * * a written constitution of a new type of government, an *industrial government* * * *."); Report of the United States Coal Commission (Senate Document No. 195, 68th Cong., 2d Sess.), Part III, p. 1338 ("* * * a constitutional basis of relationship").

[56] Compare C. G. Eubanks in *Management's Industrial Relations Problems* (1936), p. 32; Twentieth Century Fund, Inc., *Labor and the Government* (1935), pp. 329–330; *New York Journal of Commerce*, January 12, 1940, p. 1.

istence almost inevitably detracts from the stability of its relations with the employer.[57]

The record of observance of signed agreements by both employers and unions is good (R. 657).[58] The success of the signed trade agreement in the bituminous coal industry where, for many years, "industrial war was chronic, bloodshed frequent, distrust, hatred, and poverty universal"[59] is but one example of its efficacy in securing the industrial peace which Congress sought to promote; the history of numerous industries attests to the fact that where the trade agreement prevails, stoppages due to strikes and other forms of friction are notably infrequent.[60]

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[57] National Labor Relations Board, Division of Economic Research, Bull. No. 4, *Written Trade Agreements in Collective Bargaining* (1940), pp. 239–245.

[58] Sumner H. Slichter, *The Government and Collective Bargaining*, in *Annals of the American Academy of Political & Social Science* (March 1935), p. 116; U. S. Commission on Industrial Relations, *Final Report and Testimony* (1916), vol. I, pp. 119–120; E. C. Brown, *The New Collective Bargaining in Mass Production: Methods, Results, Problems*, in *Journal of Political Economy* (Feb. 1939), p. 40. In International Labour Office, *Collective Agreements* (Geneva, 1936), it is stated that (p. 265): "* * * the collective agreement * * * has discharged its important functions on the whole so smoothly and efficiently that the full extent of its influence on our national life is often overlooked."

[59] John R. Commons, *A New Way of Settling Labor Disputes*, in *Review of Reviews* (1901), vol. 23, p. 329.

[60] E. E. Cummins, *Labor Problem in the United States* (1935), pp. 153–154, 202–203, 209. Cummins also adverts to the long success of signed agreements in the foundry, glass

This normal final step in the "practice and procedure of collective bargaining" constitutes, as a matter of fact, the most effective means whereby collective bargaining accomplishes the purposes of the Act. No reason is apparent why this step should be excluded by judicial interpretation.

The Circuit Courts of Appeals for the First, Second, Fourth, Eighth, and Tenth Circuits, as well as the court below, have held that an employer's refusal to embody agreed terms in a written trade agreement constitutes a refusal to bargain collectively in violation of the Act., *Bethlehem Shipbuilding Corp.* v. *National Labor Relations Board,* 114 F. (2d) 930 (C. C. A. 1st); *Art Metals Construction Co.* v. *National Labor Relations*

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bottle, and publishing industries (pp. 200–202), and notes that the agreements of the Amalgamated Clothing Workers of America have succeeded in "bringing some degree of order into what was formerly one of the most chaotic industries we had" (p. 206). Professor Commons points out that the period from 1898 to 1904 was characterized both by absence of industrial strife and by a remarkable growth in trade agreements. Commons and Associates, *History of Labor in the United States* (1926), vol. II, pp. 524–525. W. B. Catlin remarks that successful publishing concerns have guarded against interruption of their operations by labor disputes by utilizing the written trade agreements. Catlin, *The Labor Problem in the United States and Great Britain* (1935), pp. 435–437. When the national railway agreement was abrogated in 1921 and further signed agreements were refused, a period of violent strife ensued. National Labor Relations Board, Division of Economic Research, Bull. No. 4, *Written Trade Agreements in Collective Bargaining* (1940), pp. 153–154.

Board, 110 F. (2d) 148 (C. C. A. 2d); *National Labor Relations Board* v. *Highland Park Mfg. Co.,* 110 F. (2d) 632 (C. C. A. 4th); *Hartsell Mills Co.* v. *National Labor Relations Board,* 111 F. (2d) 291 (C. C. A. 4th); *Wilson & Co., Inc.* v. *National Labor Relations Board,* decided December 2, 1940 (C. C. A. 8th); *Continental Oil Co.* v. *National Labor Relations Board,* 113 F. (2d) 473 (C. C. A. 10th), pending on certiorari limited to another point, No. 413, this term. See, also, *National Labor Relations Board* v. *Sunshine Mining Co.,* 110 F. (2d) 780, 788, 793 (C. C. A. 9th), certiorari pending, No. 352, this Term. Only the Circuit Court of Appeals for the Seventh Circuit has held to the contrary. *Inland Steel Co.* v. *National Labor Relations Board,* 109 F. (2d) 9 (C. C. A. 7th); *Fort Wayne Corrugated Paper Co.* v. *National Labor Relations Board,* 111 F. (2d) 869 (C. C. A. 7th).[61] The opinions in the *Art Metals* and *Highland Park* cases lucidly state various of the considerations presented in this brief. We respectfully refer the Court to those opinions.

[61] In the *Inland Steel* case the court held that a signed agreement could not be held to constitute "an integral part of the term 'collective bargaining' " unless such an agreement was required in all cases, whereas the Board was said to have conceded that there might be some circumstances in which it was not necessary to reduce agreed terms to writing (109 F. (2d), at 23–24, see note 36, p. 48, *supra*). It followed, the court held, that the form of the agreement was a matter for negotiation, and, since "the proposal to sign an agreement was given rather careful consideration" by the company

B. THE BOARD'S ORDER IS VALID

The propriety of the Board's order (R. 229) assumes an independent significance here only in the event this Court overturns the Board's finding (R. 214–224) that petitioner violated Section 8 (5) and (1) of the Act by refusing to embody terms agreed upon by petitioner and the Union in a signed trade agreement. If that finding be upheld, as we

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(although the company's position left no room for "negotiation"), there was no refusal to bargain (109 F. (2d), at 24–25). The court also relied upon the statement by this Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45, that "The Act does not compel agreements between employers and employees." Compare pp. 48–49, *supra*. In the *Fort Wayne* case, decided after the *Art Metals* and *Highland Park* decisions, the Seventh Circuit reaffirmed its holding in the *Inland Steel* case, stating that the last decision "is the law in this circuit until (and *if*) a contrary ruling is made by the Supreme Court" (111 F. (2d) at 872, italics the Court's). The court held, however, that under the circumstances of the *Fort Wayne* case, the employer's willingness to post agreed terms as a unilateral statement of policy but not to embody those same terms in a signed agreement, made it "difficult, if not impossible, to avoid the conclusion that the employer did not wish to deal with, and would not recognize the labor union directly or impliedly, and this attitude accounts for its refusal to sign any labor agreement with a labor union," and that this attitude was "repugnant to the spirit of the Act" (*ibid.*). The court seemed to recognize that the signed agreement was an element of recognition when it stated that the obligation to bargain collectively "is not fully met where the employer refuses to act if its action recognizes a union" (*ibid.*). But, upon settlement of the decree, without opinion, the signed agreement provision was stricken from the Board's order. *Cf National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 455.

have argued it should be (pp. 50–64, *supra*), there can scarcely be any doubt as to the power of the Board to issue the order in question.[62] At this point, therefore, our argument will be confined to showing that, aside from that particular finding, there are other cogent reasons for enforcing the order as within the discretion of the Board.

There are two conceivable reasons for giving such independent consideration to the validity of the order. First, the substantive provisions of Section 8 (5) might be thought not to impose a general obligation to incorporate agreed terms in a signed agreement; secondly, the Union in this case might be thought to have acquiesced in petitioner's refusal to discharge the obligation. But, under either or both of these circumstances, we submit, the order is a valid exercise of the Board's "judgment and discretion in determining, upon the basis of the findings, whether the case is one requiring an affirmative order, and in choosing the particular affirmative relief to be ordered." *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 265; *International Association of Machinists etc.* v. *National Labor Relations Board*, No. 16, this Term, decided November 12, 1940.

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[62] This Court, in *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, enforced an order requiring an employer to bargain collectively and, if an understanding were reached, to embody it "in an agreement" if the Union so requested. Accord: *Globe Cotton Mills* v. *National Labor Relations Board*, 103 F. (2d) 91 (C. C. A. 5th). The only added requirement here is that the agreement be signed.

1. The evidence fully supports the Board's finding (R. 221–222) that, regardless of whether Section 8 (5) imposes a duty to embody agreed terms in a signed agreement, petitioner's refusal of such an agreement in this case rested upon its desire to disparage the Union as an appropriate representative of the employees by denying it a recognized status as such representative. Petitioner's stand on the signed contract question, when viewed in the light of its entire course of conduct, plainly is shown to be merely one phase of its efforts to avoid genuine collective bargaining.[63] An order which merely directed petitioner to bargain collectively would permit the same evasion, the same efforts to render the process nugatory. To avoid the sterility to which petitioner's persistence in its attitude would condemn future bargaining between the parties, the Board may make specific provision against one aspect of petitioner's failure to manifest the requisite good faith. The provision of the order in question here, we submit, is "adapted to

[63] Compare *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 110 F. (2d) 632, at 637–638 (C. C. A. 4th): "* * * the attitude of respondent towards signing a written contract was of a piece with its refusal, as found, to make even an oral agreement regarding matters as to which there was no real disagreement. Both arose out of a determination not to enter into real collective bargaining with the union. If some valid reason had been advanced for unwillingness to reduce agreements to writing, this conclusion would not necessarily follow; but in the absence of explanation, it clearly indicates respondent's hostility to the whole process of collective bargaining."

the situation which calls for redress." *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 348.

2. Any technical acquiescence by the Union in petitioner's refusal to sign an agreement is equally insubstantial as a basis on which to rest petitioner's argument. The order is appropriate because the Board may issue an order "formed and phrased to prevent" evasion of the Act. *National Labor Relations Board* v. *Pure Oil Co.*, 103 F. (2d) 497, 498 (C. C. A. 5th). Upon this record, there is little room for a supposition that in future bargaining petitioner would consent to a signed agreement even if the Union insisted that it discharge that obligation. It is, therefore appropriate for the Board to obviate the necessity for a future proceeding by issuing an order which spells out an important feature of petitioner's duty. This duty, it may be observed, may be viewed as arising either under a general obligation to embody agreed terms in a signed agreement (pp. 50–64, *supra*) or under the obligation, required to be met by petitioner in the circumstances here, to cease one phase of its efforts to avoid genuine collective bargaining (pp. 67–68, *supra*). In either case the reasonable anticipation that petitioner will impose a block to the realization of the objectives sought through the collective bargaining procedure, warrants a preventative order.

Orders identical with the provisions here under discussion have been enforced by the Circuit Courts of Appeals for the Fourth and Ninth Circuits, expressly without reference to whether the employer violated the Act by refusing to embody agreed terms in a signed agreement. *National Labor Relations Board* v. *Highland Park Mfg. Co.*, 110 F. (2d) 632, 639 (C. C. A. 4th); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 793 (C. C. A. 9th). *Contra: M. H. Ritzwoller Co.* v. *National Labor Relations Board*, 114 F. (2d) 432 (C. C. A. 7th). We submit that the Board was well within the confines of its power when it determined that this affirmative relief was likewise appropriate in the present case.

III

THE ORDER REQUIRING PETITIONER TO DISESTABLISH THE ASSOCIATION IS VALID

Petitioner contends that the order (R. 229) requiring it to withdraw all recognition from, and to disestablish, the Association as the representative of any of the employees is supererogatory for the reason that "continued recognition of the Union is the equivalent of nonrecognition of the Association" (Br. 11, 65–66; Pet. 3). The argument completely mistakes the basis and function of the order.

Such an order is appropriate where the Board may reasonably find that it is necessary to remove an obstacle to the employees' free exercise of the

rights of self-organization and collective bargaining.[64] Its objective of "wiping the slate clean," *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 250, is accomplished by making known to the employees that the company union is permanently barred "from consideration as an employees' representative." *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 461–462. Petitioner's so-called "nonrecognition" of the Association, while negotiating with the Union, is plainly insufficient to achieve these legitimate ends of the disestablishment order.[65]

Petitioner's conduct, as the Board (R. 226–227) and the court below found (R. 1147–1148), has far from equalled an unequivocal announcement that the Association is permanently disqualified from representing employees. Quite to the contrary, petitioner has continued to recognize the Association as a potential representative of employees, qualified under Sections 9 (a) and 8 (5) to demand recognition as the exclusive representative, if des-

[64] *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 270; *National Labor Relations Board* v. *Pacific Greyhound Lines*, 303 U. S. 272, 275.

[65] Such "non-recognition" is even less effective, in dissipating the effects of employer interference and support, than were the notices, as modified by the Circuit Court of Appeals in the *Falk* case, which this Court criticized as permitting the impression that "while in terms disestablished for the time being [the company union] was still available for selection by the employees" (308 U. S. at 462).

ignated by a majority, of the employees.[66] Petitioner's refusal to name the Union as the representative which negotiated the bulletin board "agreement" was defended on the ground that such action might impair the Association's efforts to achieve majority designation and exclusive recognition (pp. 41–42, *supra*). Riley testified that petitioner, since it had two "fairly evenly divided" groups of employees, was obligated to protect "the rights of the minority" by remaining neutral in the "age-old struggle for power" and by avoiding any action which might cause the Association "to quit" (R. 1106–1107). Petitioner, in truth, sought to avoid any action having the incidental effect of discouraging the efforts of the Association to supplant the Union (R. 1107). Petitioner's reasons for refusing a signed agreement

[66] The court below stated, in overruling petitioner's opposition to enforcement of the disestablishment order (R. 1147–1148):

"The record supports the Board's view that disestablishment of the Association is necessary to assure petitioner's employees that they are free to exercise the rights guaranteed to them by § 7. We doubt if any employee would infer from mere negotiation with the Union, pursuant to preelection promise and the mandate of the Act, that petitioner's favor had been withdrawn from the Association. As long as employees may reasonably entertain a belief that petitioner's favor can be won by abandoning the Union for the Association, they will not be free to exercise the rights guaranteed to them by § 7. If the Board has reasonable ground to believe that such a situation exists, it may direct the employer to employ whatever means it regards as reasonable to

plainly had roots in the same soil. And, as a ground for its elimination of all details of the grievance machinery from the "agreement," petitioner stated that it would be unfair "to the minority party among the employees" to intimate that "these 800 men who belong to the Association * * * could do anything through the Union grievance committee" (R. 610–612). The members of the Association, moreover, continued to meet and pay dues and, at the time of the hearing, regarded the Association as a labor organization qualified to represent employees (R. 72–74, 907–908, 965, 978, 1018). The Association's president testified that while his organization was not the authorized collective bargaining representative "at the present moment," as to the future "you can never tell" (R. 976–977). And the Association, during petitioner's negotiations with the Union, sought to weaken the Union's position as the employees' representative by circulating rumors "that the company never intended to come to any agreement" with the Union and that bargaining through the Union was therefore futile (R. 613, 589). To these rumors was

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bring home to the employees that, as far as their employer is concerned, they are entirely free to exercise all the rights guaranteed in § 7. The fact that even here petitioner seeks to justify its refusal to enter into a written contract, in part, upon the ground that a large proportion of its employees voted for the Association, indicates that it still accords the Association recognition in violation of the Act and shows that the Board did not abuse its discretion in directing the disestablishment of the Association."

added the weight due to petitioner's known favor for the Association, to its unwillingness at any stage of the negotiations to injure the Association's cause, through extending complete recognition to the Union (*supra,* pp. 40, 43), and to the fact that, if another strike occurred, the Association still remained available as a strike-breaking agency (*supra,* pp. 23, 34). Finally, in its brief in this Court, continuing to deny its responsibility for the activities of its supervisors, dominating and interfering with the Association (Br. 65–69, 90), petitioner discloses that it still recognizes the Association as fully qualified to represent its employees in all matters except those assigned exclusively to the representative of the majority.

The employees certainly have ample grounds for believing that petitioner's relations with the Association have merely been suspended. The Board was therefore warranted in finding that it was necessary for petitioner to announce unequivocally that its candidate was permanently outside the field of selection. *National Labor Relations Board* v. *Falk Corp., supra.*[67]

[67] Petitioner's contention (Br. 65) that it cannot "withdraw all recognition from the Heinz Employees' Association as the representative of any of its employees," as the order requires (R. 229), because "there is no showing that petitioner has been or now is recognizing the Association as the representative of its employees," is merely a play on words. As petitioner must have known from the Board's findings (R. 226–227), the phrase "all recognition * * * as the representative of any of its employees" in the Board's order

CONCLUSION

It is respectfully submitted that, for the foregoing reasons, the provisions of the Board's order challenged by petitioner are valid and that the decree below should be affirmed.

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DECEMBER 1940.

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comprehends more than the exclusive representation and recognition provided by Sections 9 (a) and 8 (5). The order refers to "*any* employees," not to "*all* employees." It requires the withdrawal of all overt cognizance by petitioner of the Association's existence as a present or potential representative of employees. Petitioner has continued to recognize the Association's existence as a labor organization, whose purposes are the usual purposes of labor organizations and which may compete with other such organizations for the allegiance of employees and for designation as their representative. The order requires petitioner to announce that it no longer regards the Association as an agency for collective bargaining.

APPENDICES

A. *Authoritative studies recognizing that signed agreements were accorded general acceptance:*

The testimony on this point, introduced at the hearing by the Board, was substantiated by reference to a host of authoritative studies (See R. 648–690). It was shown, e. g., that on June 30, 1936, there were on file with the Railway Mediation Board, 3,485 signed trade agreements covering 909,249 employees of Class A railroads in this country and that various trade unions in important American industries have entered into large numbers of such agreements with employers (R. 675–676). In its *First Annual Report* (1935) the Railway Mediation Board said (at p. 36): "Since the enactment of the Railway Labor Act of 1926, it has become the established policy of practically all railroads to enter into such contracts with their employees." Board Exhibits 29, 31A through 31G, and 32 deal with the extent of signed agreements in various important industries in the United States. Concerning the growth and present extent of signed trade agreements generally, see National Labor Relations Board, Division of Economic Research Bull. No. 4, *Written Trade Agreements in Collective Bargaining* (1940) pp. 213–236, 49–209, U. S. Department of Labor, Bureau of Labor Statistics, *Five Years of Collective Bargaining* (1937), pp. 5–7; Saposs and Gamm, *Rapid Increase in Contracts,* 4 Labor Relations Reporter No. 15, p. 6.

B. *Employer organizations acknowledging the signed agreement as the normal medium for the collective compact:*

"Once an agreement has been reached, whether by trading upon the part of the employer, down by the union (sic), or a combination of both, the employer has no logical reason for refusing to sign a written contract. The only interpretation the union can place on the employer's refusal to adhere to a long established business custom is that he intends to violate his word unless he is legally obligated to observe it." Paul Mooney, *Collective Bargaining* (1935), pp. 13–14, published under auspices of American Management Association. The National Industrial Conference Board, the leading research agency for employers' associations in the United States, prints, as an aid to its subscribers, a form of written collective agreement which provides space for signatures of the employer and the employees' representative. This organization also notes that improvement in the form of signed trade agreements implies that "collective bargaining has progressed beyond the preliminary stage of instinctive combativeness" and indicates "a more serious acceptance of collective bargaining * * *." National Industrial Conference Board, Management Record (July 1939), *A Comparison of Union Agreements.*

C. *Authorities recognizing the refusal to enter into a signed agreement as a subterfuge to avoid collective bargaining:*

"One of the subterfuges of certain antiunion employers had been a refusal to sign a trade agreement or union contract. Some employers would meet and bargain with union leaders and come to general understandings, but would refuse to incorporate them in bilateral written agreements; a few employers would go so far as to write out the terms and post them on bulletin boards as unilateral 'statements of company policy,' signed only by the management. * * * such tactics provided obvious evidence of incomplete recognition and bad faith * * *." Carroll R. Daugherty, *Labor Problems in American Industry* (Rev. ed., 1938), pp. 936–937. Compare the increased refusal to sign agreements during periods when, through concerted "open shop" drives, industry was attempting to destroy the organization of labor. Commons and Associates, *History of Labor in the United States* (1926), vol. II, pp. 526, 882–883. Concerning the practice of employers who met and discussed differences with the representatives of their employees under the compulsion of Section 7 (a) of the National Industrial Recovery Act, but refused to embody the terms agreed upon in a signed trade agreement, publishing the terms, instead, through the medium of a unilateral bulletin board statement, one authority has said: "It is evident that this procedure is not collective bargaining," Twentieth Century Fund, Inc., *Labor and the Government* (1935), p. 339. See, also, Massachusetts

Bureau of Statistics, *Annual Report, 1912, Part III, Collective Agreements between Employers and Labor Organizations, 1911* (1912), p. 120. The basis of the attitude behind insistence upon unilateral statements of policy where "outside" unions were concerned, was further emphasized by the almost uniform willingness to conclude signed agreements with "inside" organizations (R. 680, 678).

D. Authorities defining "collective bargaining" as comprehending a willingness and obligation to embody agreed terms in a signed trade agreement:

The Board's expert witness testified, without contradiction, that in the terminology accepted in the field, the term "agreement," unless expressly qualified, referred to a written, signed trade agreement (R. 670). See, also, Dale Yoder, *Labor Economics and Labor Problems* (1933), pp. 439, 443–447; Sumner H. Slichter, *Modern Economic Society* (1931), p. 37. Compare, also, the view that an oral agreement "is so vague, indefinite and especially so difficult of interpretation in case of dispute that it is better to consider it as a quasi-agreement, one in process of development from a crude form of collective bargaining to a real trade agreement." George G. Groat, *Organized Labor in America* (2d ed., 1926), p. 338; "* * * a collective agreement is not valid unless drawn up in writing." International Labour Office, Geneva, *Collective Agreements* (1936), p. 61. The following quota-

tions, viewed in the light of this background, fully supports the statement in the text:

"Collective bargaining may be defined as the process by which the general labor contract itself is agreed upon by negotiation directly between employers, or employers' associations, and organized workingmen." *Final Report* of the *United States Industrial Commission* (1902), vol. XIX, p. 834.

"The natural product of collective bargaining is the collective or trade agreement. * * * it is * * * the culmination of the collective bargaining process." Dale Yoder, *Labor Economics and Labor Problems* (1903), p. 439.

"*Collective bargaining.*—The negotiation of a trade agreement between one or more employers and one or more groups of employees acting collectively through representatives chosen by the respective parties." Harvard University, Bureau of Industrial Research, Bulletin No. 25, *Labor Terminology* (1921), p. 17.

"The process of collective bargaining results * * * in a trade agreement," Walton H. Hamilton, Collective Bargaining in *Encyclopedia of the Social Sciences* (1926), vol. III, pp. 629–630.

"Real collective bargaining * * * requires getting together in a joint conference and, through representatives, making a *trade agreement* binding on individuals on both sides." John R. Commons and John B. Andrews, *Principles of Labor Legislation* (Rev. ed., 1927), p. 129.

"If collective bargaining assumes organization on both sides, it also assumes that the bargain ultimately agreed upon will be embodied in writing, analogous in form to contracts, which both parties are pledged to keep in good faith." Martin G. Glaeser, *Outlines of Public Utility Economics* (1927), pp. 522–523.

"* * * Collective bargaining presupposes the acceptance of agreements and contracts that are determined through agents of the group. * * *" Gordon S. Watkins, *Labor Problems* (Rev. ed., 1929), p. 410.

"Collective bargaining is the working rules of trade agreements." John R. Commons, *Institutional Economics* (1934), p. 758.

"Another defect of bargaining under company unionism is that it ordinarily does not lead to signed agreements for fixed periods of time, as does collective bargaining under trade unionism." Twentieth Century Fund, Inc., *Labor and the Government* (1935), pp. 329–380.

"Every step in the process from the joining of a union to the signing of a trade agreement * * *," Hugh A. Donahoe, *Collective Bargaining Under the National Labor Relations Act* (1935), p. xi.

"Collective bargaining, if successful, generally results in the adoption of a trade agreement signed by both employers and employees." Edward Berman, in *Economic Principles and Problems* (1936), vol. II, p. 286.

"* * * Collective bargaining exists in an industry when its organized employees through their own selected agents make an agreement with the employer which is binding upon both parties. Such trade agreements ordinarily include stipulations concerning wages, hours, and conditions of work * * *." William H. Kiekhofer, *Economic Principles, Problems, and Policies* (1936), pp. 153–154, 229.

"If there is real collective bargaining, there should be written agreements embodying the results * * *." William M. Leiserson, *The Effect of New Deal Legislation upon Industrial Relations,* in American Economic Review Supplement (March 1936), p. 293.

"* * * Let us look at this word bargaining; see what it actually means. It is the process of adjusting attitudes, preliminary to the making of a contract. * * * Bargaining is the process of getting people's minds ready for contracts by persuasion or other means." Earl Dean Howard, *Collective Bargaining and Private Enterprise,* in *Addresses on Industrial Relations,* Bureau of Industrial Relations, University of Michigan (1937), p. 40.

"* * * collective bargaining through trade-union agreements has grown to the point where it has now become the accepted procedure in establishing wages, hours, and working conditions in a considerable part of the American industry." U.

S. Department of Labor, Bureau of Labor Statistics, *Five Years of Collective Bargaining* (1937), p. 7.

"* * * collective agreements * * * represent normally the conclusion of the bargaining process." Bureau of National Affairs, Inc., *Labor Relations Reference Manual* (1938), vol. I–A, p. 779.

"* * * It is impossible to discuss collective bargaining without referring to trade agreements, and *vice versa*. These contracts exist wherever employers recognize and bargain with unions." Carroll R. Daugherty, *Labor Problems in American Industry* (Rev. ed., 1938), p. 454.

See, also, the further authorities cited in National Labor Relations Board, Division of Economic Research, Bull. No. 4, *Written Trade Agreements in Collective Bargaining* (1939), pp. 15–16.

E. *Authorities recognizing the signed trade agreement as the foremost instrumentality for industrial peace.*

"The hope of future peace in the industrial world lies in the trade agreement." Mitchell, *Organized Labor* (1903), p. 347.

"Trade agreements have done more to * * * minimize strikes than any other single instrumentality." Ethelbert Stewart, *Trade Agreements*, in *Annals of the American Academy of Political and Social Science* (Sept. 1910), pp. 321–330.

"The trade agreement * * * seeks to eliminate possible points of dispute. While a comprehensive trade agreement will provide methods of settling differences, this is secondary in importance. Primarily it assumes that normally there will be no need for them. It arranges working relations instead of fighting relations * * *. On the whole, the evidence seems conclusive that where the trade agreement is developed on conservative lines and entered into in good faith by both parties, it acts decisively as a steadying influence." George G. Groat, *An Introduction to the Study of Organized Labor in America* (2d ed., 1926), pp. 337–339, 341, 345, 346.

"The most important agency for maintaining industrial peace that is now available and that can be adapted to our present wage system is the *trade agreement.*" Richard T. Ely, *Outlines of Economics* (5th rev. ed., 1930), p. 712.

"The popularity and strength of trade agreements as a form of industrial government are attributable to their attempts to adjust differences peacefully rather than by resorting to force, to their frank recognition of both a conflict and a harmony of interests in industry, and to the fact that for their successful negotiation both employers and organized labor are directly responsible." William H. Kiekhofer, *Economic Principles, Problems, and Policies* (1936), pp. 153–154, 229.

See also, Bye and Hewett, *Applied Economics* (1928), pp. 154–155; Ira B. Cross, *Collective Bar-*

gaining and Trade Agreements in the Brewery Metal, Teaming and Building Trades of San Francisco, California (1918), pp. 343–346; Solomon Blum, Labor Economics (1926), pp. 374–375; William M. Leiserson, *Right and Wrong in Labor Relations* (1938), pp. 72–73.

F. *The relevant provisions of the National Labor Relations Act* (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. V, Title 29, Sec. 151, *et seq.*):

> SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.
>
> The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership

association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

SEC. 9 (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

* * * * *

SEC. 10 (c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

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SUPREME COURT OF THE UNITED STATES.

No. 73.—October Term, 1940.

H. J. Heinz Company, Petitioner, vs. National Labor Relations Board. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[January 6, 1941.]

Mr. Justice Stone delivered the opinion of the Court.

Three questions are presented by the petition for certiorari in this case.

First. Whether there is support in the evidence for the finding of the National Labor Relations Board that petitioner has been guilty of the unfair labor practices defined by § 8(1) and (2) of the Act, interference with the exercise by its employees of their rights of self-organization guaranteed by § 7 of the Act, and more particularly interference with the formation and organization of a labor union of its employees.

Second. Whether the National Labor Relations Board exceeded its authority in ordering the disestablishment of a labor union in whose organization petitioner had interfered, and

Third. Whether the Board could validly find that petitioner's refusal to join with representatives of the labor organization authorized to represent its employees in collective bargaining, in signing a written contract embodying the terms of their agreement concerning wages, hours and working conditions, constituted a refusal to bargain collectively in violation of § 8(5) of the Act, and whether the Board exceeded its authority in ordering petitioner to join in signing the agreement.

This is a proceeding brought by the National Labor Relations Board in the Court of Appeals for the Sixth Circuit to enforce the Board's order directing petitioner to cease certain unfair labor practices in which it found that petitioner had engaged, in connection with the organization of the Heinz Employees Association, a plant labor organization of petitioner's employees; to disestablish

the Association; to recognize and bargain collectively with the Canning and Pickle Workers Local, Union No. 325, a labor organization affiliated with the American Federation of Labor; and to sign a written contract embodying any agreement which petitioner and the Union may reach respecting wages, hours and working conditions of petitioner's employees. The court of appeals confirmed the findings of the Board and directed compliance with the Board's order without modification. 110 F. (2d) 843. We granted certiorari, 310 U. S. 621, the questions raised by the petition being of public importance in the administration of the National Labor Relations Act.

The Board found that during April and May, 1937, the two rival labor organizations, the Association and the Union, sought to organize petitioner's employees at its Pittsburgh plant. Petitioner's proposal that an election be held to determine which organization represented a majority of its employees was rejected by the Union which called a strike on May 24, 1937. The strike was ultimately settled by a written contract signed by petitioner, the Union, and the Association, which provided for an election, by the employees, under the supervision of a regional director of the National Labor Relations Board for the choice of an organization to represent them in collective bargaining. Meanwhile, and before the election, a majority of petitioner's two thousand employees at the Pittsburgh plant had signed petitions for membership in the Association, but upon the election held June 8, 1937, a majority of the employees cast their ballots for the Union. Petitioner has since recognized and bargained with the Union, but has refused to embody its agreement with the Union in a written contract.

Before the election the Union had lodged a complaint with the Board concerning the participation by petitioner in the attempted organization of the Association by petitioner's employees. The Board found that petitioner had been guilty of unfair labor practices by interfering in the organization of the Association, contrary to the Act. It found in detail that petitioner, through superintendent, foremen and other supervising employees, had interfered with, restrained and coerced its employees in the exercise of their rights to organize in violation of §§ 7, 8(1) of the Act; that it had dominated and interfered with the formation of the Association and contributed to its support within the meaning of § 8(2), and that it had refused to sign an agreement with the Union. On the basis of these and subsidiary findings which need not now be stated, the

Board made its order, the terms of which so far as now relevant have already been set forth.

Petitioner's Responsibility for Unfair Labor Practices. It is unnecessary to make a detailed examination of the evidence supporting the Board's findings respecting unfair labor practices both because the court below, after a thorough examination of the record has confirmed the Board's findings, and because of the nature of petitioner's contention with respect to them. Petitioner does not deny that there is evidence supporting the findings that petitioner's superintendent, during the organization campaign, upbraided employees for attending Union meetings, threatened one with discharge if he joined the Union, spoke to them disparagingly of the Union and directed some of petitioner's foremen to enroll the employees in the Association; or that there was evidence supporting the finding that a general foreman working throughout petitioner's Pittsburgh plant was active in disparaging the Union and its members to employees, and in urging them to repudiate the Union organization, or that three other foremen in charge of particular buildings or departments were active in dissuading employees from joining the Union. All three spoke disparagingly of the Union, one at a meeting of employees which he had called; and two were active in questioning employees concerning their labor union sympathies. Two of them threatened employees with discharge or loss of work or privileges if the Union were recognized.

There was also evidence that other foremen or forewomen in charge of large groups of employees engaged in similar activities; and that some solicited employees to join the Association; that one of the three foremen induced an employee to solicit signatures to the Association petition during working hours without loss of pay, and suggested the names of other employees to aid in this work. There was also evidence that leaders or supervisors of employee groups were allowed to go about the plant freely during working hours and without loss of pay to solicit memberships in the Association which was done in the presence of the foremen.

Petitioner does not seriously dispute this evidence or challenge the findings of the Board summarizing it. The contention is that the activities of these supervisors of employees are not shown to have been authorized or ratified by petitioner; that following a complaint by a representative of the Union, about May 1st, one of

petitioner's officers instructed the superintendent that the employees had a right to organize and that he wished the supervising force to understand that they should not be interfered with in any way in organizing, and that on May 21st the officer in question called a meeting of the supervisory force at which he gave like instructions; that there is no evidence of like activities after this time and that since the election petitioner has consistently recognized and bargained with the Union. From all this petitioner concludes that it is not chargeable with any responsibility for the acts of its supervisory employees and that consequently the evidence does not support the findings of unfair labor practices on its part, or justify the Board's order prohibiting petitioner, its officers and agents from interfering with the administration of the Association or contributing to its support.

Notwithstanding the knowledge from the start of some of petitioner's officers, of the organization campaign, and notwithstanding the unusual excitement and activity in petitioner's plant attending it, we assume that all were unaware of the activities of its supervisory staff complained of, and did nothing to encourage them before the complaint of their activities made by a representative of the Union about May 1st. At that time the campaign for membership in the rival unions was at its height and resulted, as announced some three or four weeks later, in a majority of petitioner's employees signing as members of the Association.

It is conceded that petitioner's superintendent and foremen have authority to recommend the employment and discharge of workmen. It is in evidence that they can recommend wage increases and that the group leaders also issued orders directing and controlling the employees and their work, with authority to recommend their discharge. There is evidence supporting the Board's conclusion that the employees regarded the foremen and the group leaders as representatives of the petitioner and that a number of employees signed as members of the Association only because of the fear of loss of their jobs or of discrimination by the employer induced by the activities of the foremen and group leaders.

We do not doubt that the Board could have found these activities to be unfair labor practices within the meaning of the Act if countenanced by petitioner, and we think that to the extent that petitioner may seek or be in a position to secure any advantage from

these practices they are not any the less within the condemnation of the Act because petitioner did not authorize or direct them. In a like situation we have recently held that the employer, whose supervising employees had, without his authority, so far as appeared, so participated in the organization activities of his employees as to prejudice their rights of self-organization, could not resist the Board's order appropriately designed to preclude him from gaining any advantage through recognizing or bargaining with a labor organization resulting from such activities. *International Association of Machinists* v. *National Labor Relations Board,* No. 16, decided November 12, 1940. See *National Labor Relations Board* v. *Link-Belt Co.*, Nos. 235, 236, decided this day.

The question is not one of legal liability of the employer in damages or for penalties on principles of agency or *respondeat superior,* but only whether the Act condemns such activities as unfair labor practices so far as the employer may gain from them any advantage in the bargaining process of a kind which the Act proscribes. To that extent we hold that the employer is within the reach of the Board's order to prevent any repetition of such activities and to remove the consequences of them upon the employees' right of self-organization, quite as much as if he had directed them.

This is the more so here where petitioner, when advised of the participation of his supervising employees in the organization campaign, took no step, so far as appears, to notify the employees that those activities were unauthorized, or to correct the impression of the employees that support of the Union was not favored by petitioner and would result in reprisals. From that time on the Board could have found that petitioner was as responsible for the effect of the activities of its foremen and group leaders upon the organization of the Association as if it had directed them in advance. The Board could have concluded that this effect was substantial, for it was in the succeeding three weeks that more than one-half of the majority of petitioner's employees who joined the Association signed their petitions for membership. We think there was adequate basis for the Board's order prohibiting petitioner, its officers and agents, from interfering with the exercise of its employees' rights of self-organization or with the administration of the Association or contributing to its support.

The Order Disestablishing the Association. What we have said of the unfair labor practices found by the Board, when considered with its unchallenged findings as to the relations of petitioner to the two unions, affords the answer to petitioner's contention that the Board was without authority to compel disestablishment of the Association. Disestablishment is a remedial measure under §10(c) to be employed by the Board in its discretion to remove the obstacle to the employees' right of self-organization, resulting from the continued or renewed recognition of a union whose organization has been influenced by unfair labor practices. Whether this recognition is such an obstacle is an inference of fact to be drawn by the Board from all the circumstances attending those practices. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines,* 303 U. S. 261; *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.,* 308 U. S. 241, 250.

Petitioner argues that as it has now recognized the Union and bargains with it, it should be equally free to recognize the Association instead of the Union whenever the former represents a majority of the employees. But in weighing this contention the Board could consider, as it did, that petitioner had failed to notify its employees that it repudiated the participation of its supervising employees in the organization of the Association and so has not removed the belief of the employees that petitioner favored and would continue to favor the Association and the employees joining it over others; that it had not mentioned the name of the Union in its bulletins announcing the terms of its agreement with the Union, and although it had reached an agreement with the Union had persistently refused to sign any written contract with it.

From this and other circumstances disclosed by the evidence, the Board inferred, as it might, that the influence of the participation of petitioner's employees in the organization of the Association had not been removed and that there was danger that petitioner would seek to take advantage of such continuing influence to renew its recognition of the Association and control its action. This we think afforded adequate basis for the Board's order. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, supra; National Labor Relations Board* v. *Falk Corp.,* 308 U. S. 453, 461, 462; *Nation Labor Relations Board* v. *Link-Belt Co., supra.* Nothing in the

order precludes members of the Association from establishing an organization independently of participation by petitioner and its officers and agents, and from securing recognition through certification of the Board or an election as provided by §9(c) of the Act.

The Employer's Refusal to Sign a Written Agreement. It is conceded that although petitioner has reached an agreement with the Union concerning wages, hours and working conditions of the employees, it has nevertheless refused to sign any contract embodying the terms of the agreement. The Board supports its order directing petitioner, on request of the Union, to sign a written contract embodying the terms agreed upon on the ground, among others, that a refusal to sign is a refusal to bargain within the meaning of the Act.

In support of this contention it points to the history of the collective bargaining process showing that its object has long been an agreement between employer and employees as to wages, hours and working conditions evidenced by a signed contract or statement in writing, which serves both as recognition of the union with which the agreement is reached and as a permanent memorial of its terms.[1] This experience has shown that refusal to sign a written contract has been a not infrequent means of frustrating the bargaining process through the refusal to recognize the labor organization as a party to it and the refusal to provide an authentic record of its terms which could be exhibited to employees, as evidence of the good faith of the employer. Such refusals have proved fruitful sources of dissatisfaction and disagreement.[2] Contrasted with the unilateral statement by the employer of his labor policy, the signed agreement has been regarded as the effective instrument of stabilizing labor

[1] Lewis L. Lorwin, The American Federation of Labor, p. 309; Commons and Associates, History of Labor in the United States, vol. II, pp. 179-181, 423-424, 480; Perlman and Taft, History of Labor in the United States, 1896-1932, vol. IV, pp. 9-10; Paul Mooney, Collective Bargaining, pp. 13-14; Twentieth Century Fund, Inc., Labor and the Government, p. 339.

Concerning the growth and extent of signed trade agreements, see National Labor Relations Board, Division of Economic Research Bull. No. 4, Written Trade Agreements in Collective Bargaining, pp. 213-236, 49-209; U. S. Dept. of Labor, Bureau of Labor Statistics, Five Years of Collective Bargaining, pp. 5-7; Saposs and Gamm, Rapid Increase in Contracts, 4 Labor Relations Reporter No. 15, p. 6.

[2] Sumner H. Slichter, Annals of the American Academy (March, 1935), pp. 110-120; R. R. R. Brooks, When Labor Organizes, p. 221. Cf. Matter of Inland Steel Co., 9 N. L. R. B. 783, 796-797.

relations and preventing, through collective bargaining, strikes and industrial strife.[3]

Before the enactment of the National Labor Relations Act it had been the settled practice of the administrative agencies dealing with labor relations to treat the signing of a written contract embodying a wage and hour agreement as the final step in the bargaining process.[4] Congress, in enacting the National Labor Relations Act, had before it the record of this experience, H. Rept. No. 1147, 71st Cong., 1st Sess., p. 5, and see also pp. 3, 7, 15-18, 20-22, 24; S. Rept. No. 573, 74th Cong., 1st Sess., pp. 2, 8, 9, 13, 15, 17. The House Committee recommended the legislation as "an amplification and clarification of the principles enacted into law by the Railway Labor Act and by § 7(a) of the National Industrial Recovery Act." H. Rept. 1147, *supra*, p. 3 and stated, page 7, that §§ 7 and 8 of the Act guaranteeing collective bargaining to employees was a reenactment of the like provision of § 7(a) of the National Industrial Recovery Act, see *Consolidated Edison Co.* v. *Labor Board*, 305 U. S. 197, 236; *Labor Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 342.

We think that Congress, in thus incorporating in the new legislation the collective bargaining requirement of the earlier statutes included as a part of it, the signed agreement long recognized under the earlier acts as the final step in the bargaining process. It is true that the National Labor Relations Act, while requiring the employer to bargain collectively, does not compel him to enter into

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[3] Carroll R. Daugherty, Labor Problems in American Industry (Rev. ed. 1938), pp. 936-937; Mitchell, Organized Labor, p. 347; George G. Groat, An Introduction to the Study of Organized Labor in America (2d ed. 1926), pp. 337-339, 341, 345, 346; First Annual Report, National Mediation Board, pp. 1-2.

[4] The National Mediation Board administering the Railway Labor Act of 1926, as amended in 1934, 44 Stat. 577, 48 Stat. 926, 1184, interpreted that Act which imposed a duty "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions . . . ", to require signed contracts. See First Annual Report, National Mediation Board (1935), pp. 1-2, 36.

The National Labor Board, created to administer Section 7(a) of the National Industrial Recovery Act, 48 Stat. 195, held that the duty to bargain collectively imposed by that section included an obligation to embody agreed terms in a signed trade agreement. See, Matter of Harriman Hosiery Mills, 1 N. L. B. 68; Matter of Pierson Mfg. Co., 1 N. L. B. 53; Matter of National Aniline & Chemical Co., 2 N. L. B. 38; Matter of Connecticut Coke Co., 2 N. L. B. 88. See, also, Matter of Whittier Mills Co., Textile Labor Relations Board, Case No. 34. Its successor, the first National Labor Relations Board did likewise. See, Matter of Houde Engineering Co., 1 N. L. R. B. (old) 35; Matter of Denver Towel Supply Co., 2 N. L. R. B. (old) 221; Matter of Colt's Patent Fire Arms Co., 2 N. L. R. B. (old) 135.

an agreement. But it does not follow, as petitioner argues, that, having reached an agreement, he can refuse to sign it, because he has never agreed to sign one. He may never have agreed to bargain but the statute requires him to do so. To that extent his freedom is restricted in order to secure the legislative objective of collective bargaining as the means of curtailing labor disputes affecting interstate commerce. The freedom of the employer to refuse to make an agreement relates to its terms in matters of substance and not, once it is reached, to its expression in a signed contract, the absence of which, as experience has shown, tends to frustrate the end sought by the requirement for collective bargaining. A business man who entered into negotiations with another for an agreement having numerous provisions, with the reservation that he would not reduce it to writing or sign it, could hardly be thought to have bargained in good faith. This is even more so in the case of an employer who, by his refusal to honor, with his signature, the agreement which he has made with a labor organization, discredits the organization, impairs the bargaining process and tends to frustrate the aim of the statute to secure industrial peace through collective bargaining.

Petitioner's refusal to sign was a refusal to bargain collectively and an unfair labor practice defined by § 8(5). The Board's order requiring petitioner at the request of the Union to sign a written contract embodying agreed terms is authorized by § 10(c). This is the conclusion which has been reached by five of the six courts of appeals which have passed upon the question.[5]

Affirmed.

Mr. Justice McReynolds took no part in the consideration or decision of this case.

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[5] Bethlehem Shipbuilding Corp. *v.* National Labor Relations Board, 114 F. (2d) 930 (C. C. A. 1st); Art Metals Construction Co. *v.* National Labor Relations Board, 110 F. (2d) 148 (C. C. A. 2d); National Labor Relations Board *v.* Highland Park Mfg. Co., 110 F. (2d) 632 (C. C. A. 4th); Wilson & Co., Inc. *v.* National Labor Relations Board, decided December 2, 1940 (C. C. A. 8th); Continental Oil Co. *v.* National Labor Relations Board, 113 F. (2d) 473 (C. C. A. 10th). *Contra*, Inland Steel Co. *v.* National Labor Relations Board, 109 F. (2d) 9 (C. C. A. 7th); Fort Wayne Corrugated Paper Co. *v.* National Labor Relations Board, 111 F. (2d) 869 (C. C. A. 7th).